No. 168. and 176.

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JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES

Brf. of Chiapella for D. E. in 1

No. 168.

MRS. BETTIE ALLEN AND W. F. COLLINS, EXECUTORS, *Plaintiffs in Error*,

Filed Dec 3, 1898.

OGDEN SMITH, EXECUTOR, ET ALS., *Defendants in Error*.

No. 176.

OGDEN SMITH, EXECUTOR, ET AL., *Plaintiffs in Error*,

versus

MRS. BETTIE ALLEN AND W. F. COLLINS, EXECUTORS, *Defendants in Error*.

CONSOLIDATED.

Brief for J. B. Turner and W. A. Turner, Defendants in Error, in No. 168, and Plaintiffs in Error in No. 176.

HENRY CHIAPELLA,

Of Counsel for J. B. and W. A. Turner. Opponents, Defendants in Error in Suit No. 168, and Plaintiffs in Error in Suit No. 176.

L. GRAHAM & SON, LTD., 217-219 BARONNE ST., NEW ORLEANS.

SUPREME COURT OF THE UNITED STATES

No. 168.

MRS. BETTIE ALLEN AND W. F. COLLINS, EXECUTORS, *Plaintiffs in Error*,

versus

OGDEN SMITH, EXECUTOR, ET ALS., *Defendants in Error*.

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versus

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Brief for J. B. Turner and W. A. Turner, Defendants in Error, in No. 168, and Plaintiffs in Error in No. 176.

SYLLABUS.

I.

The jurisprudence of the United States is fixed on these three propositions, viz.:

1. An indemnification for unjust captures is not a donation, but a right.
2. Sums awarded to the administrators or syndics of the claimant become assets of the succession or insolvency, distributable as such in their hands.

3. Equitable claims against our own and foreign governments are expectancies coupled with an interest, and as such are property rights passing under assignments in bankruptcy.

Comegys vs. Vasse, 1 Peters, 217.
Sheppard vs. Taylor, 5 Peters, 675.
Frevall vs. Bache, 14 Peters, 95.
Judson vs. Corcoran, 17 Howard, 613.
Phelps vs. McDonald, 99 U. S. 303.
Williams vs. Heard, 140 U. S. 529.

The sugar bounty in the Calder case was considered in the same light. It was there held that the sugar bounty was not a pure gratuity, but compensation offered to stimulate production. A contract with the government is formed, and the claim for bounty is a vested right, subject to sale under execution and passing to the syndics under our insolvency laws.

Calder vs. Henderson, 4 U. S. C. C. of A. Rep. 584.

In the recent Bounty cases the Supreme Court of the United States held that the bounty claims were of a nature which Congress might rightfully decide to constitute a debt of the United States, and the government through Congress had a right to pay the debts of the United States.

U. S. vs. Realty Co., U. S. vs. Gay, 163 U. S. 427.

II.

The claim against the Government resulting from the Appropriation under the Act of March 2, 1895, was a *right* forming part of the general assets of the succession of the deceased, and as such transmissible to his heirs at law—whether it existed at time of death, or accrued since the opening of the succession.

Articles 871, 872, 873, 874 of Revised Civil Code of Louisiana.

Such claim is not a pure donation to the heirs of Allen directly, but a right of compensation for spoliation to Allen and his estate.

Distinction to be drawn between Emerson vs. Hall, and Comegys vs. Vasse and similar cases.

Comegys vs. Vasse, 1 Peters, 217.
Emerson vs. Hall, 13 Peters, 411.

III.

The bounty to sugar producers is not a part of the proceeds of the crop.

Delogny vs. Creditors, 48 Louisiana Annual, 488

There is no principle of law under which bounty money can be classed as an accessory to the crop. It is neither an immovable by destination, nor by the object to which it applied.

Articles 463, 465, 468, 471 of Revised Civil Code of Louisiana.

IV.

"A testamentary disposition under a particular title shall have its effect according to the rules established for particular legacies."

Article 1605 of Revised Civil Code of Louisiana.

"Every legacy not included in the definition given of universal legacies and legacies under a universal title, is a legacy under a particular title."

Article 1625 of the Revised Civil Code of Louisiana.

"Le legs particulier est celui par lequel le testateuer égue des objet déterminés de la succession. Je lègue à Paul telle maison, une somme de 2000 fr. On voit que le légataire particulier, recevant un objet déterminé, indépendant des dettes et charges, ne droit pas en ëtre tenu. *Il ne représente pas la personne du défunt*" (italics ours).

Rogron (Code Napoleon annoté), 248.

"Every legacy under a particular title gives to the legatee, from the day of testator's death, a right to the thing bequeathed, which right may be transmitted to his heirs or assigns * * * Nevertheless the particular legatee can take possession of the thing bequeathed, or claim the proceeds or interest thereof, only from the day the demand of delivery was formed." * * *

Article 1626 of Revised Civil Code of Louisiana.

"The delivery of legacies under a particular title must be demanded of the testamentary executor who has the seizin of the succession." * * *

Article 1630 of Revised Civil Code of Louisiana.

"The legacy bequeathed shall be delivered with every thing that appertains to it, in the condition in which it was on the day of the donor's decease."

Article 1636 of Revised Civil Code of Louisiana.

"When one who is executor and also universal legatee takes possession of the estate as executor, he will not be regarded as having possession in his capacity of legatee; nor can he without judicial authorization change the nature of his possession."

Bird vs. Jones, 5 Louisiana Annual, 643.

Succession of Frazier, 33 Louisiana Annual, 594; 35 Louisiana Annual, 381.

Succession of Townsend, 37 Louisiana Annual, 408; 38 Louisiana Annual, 861.

A fortiori, where the legatee is only one of the three executors. For such join seizin of the three executors excludes the idea of the single possession of the executor-legatee, which is provided for by Art. 1628 of Revised Civil Code of Louisiana.

VI.

Under the act of Congress of March 2, 1895, the ownership must be vested in the producer and manufacturer to entitle the claimant to the benefit of said act.

The net proceeds of the crop of 1894-95, decreed to Mrs. Allen, do not vest ownership of the crop itself, from which said proceeds are derived by sale.

The right of action of said legatee to the net proceeds of the crop is one of accounting, and gives no right to the "thing," which by its sale established the proceeds.

The ownership of a thing is vested in him who has the *immediate dominion* of it, and not in him who has a *mere beneficiary right* in it. (Italics ours.)

Article 489 of Revised Civil Code of Louisiana.

"La propriéte d'une chose est dite appartenir à celui qui en a le *domaine direct*, et non à celui qui n'n a que le *domaine utile*." (Italics ours.).

Article 481 Louisiana Civil Code of 1825, French text.

(Article 489 of Revised Civil Code of Louisiana.)

VII.

Where a "testator, speaking by and through his will, instructed his executors to sell his Rienzi plantation, and gave them a designated time in which to act, and directed that until the sale, the wife should receive the proceeds of the plantation, if worked, until sold. *Held*, that the wife was entitled to the net proceeds as long as the plantation remained in the hands of the executors, and the proceeds of the crop growing on the place at the time of his death, passed to his wife."

Succession of Allen, 48 Louisiana Annual, p. 1037 (syllabus).

These two cases consolidated by agreement of counsel come up on two separate writs of error to the Supreme Court of the State of Louisiana prosecuted by Mrs. Bettie Allen individually and as executrix, and by W. S. Collins, executor, on the one hand, and by Ogden Smith, individually and as executor, together with the Smith heirs, the Allen heirs and the Turner heirs, on the other hand.

The two records are printed together and are to be considered as one case.

[Agreement of counsel, Record, pp. 153–154.]

STATEMENT OF FACTS.

The question presented for solution is whether the bounty of 8-10 of a cent allowed and granted to *producers* of sugar, who had complied with all requisites under prior tariff laws, on all sugars actually manufactured and produced between August 28, 1894, and June 30, 1895, both days inclusive, as formulated in the second paragraph of the item "Bounty on Sugar," contained in the "appropriation bill for sundry civil expenses of the government, etc., of date March 2, 1895," should be considered as an accessory to a crop of sugar which under the last will and testament of a deceased sugar planter and producer had been bequeathed to a particular legatee, or whether said bounty should not be held to be a right, a chose in action, a mere claim, not connected in any way with the sugar crop, except as a means of calculation, and forming part of the general assets of the succession of such deceased sugar planter and producer, and as such transmissible to his heirs at law inheriting the unbequeathed and undisposed residuum of the estate.

The act of Congress under consideration in its second paragraph (which alone concerns us here) has no reference to *manufacturers* of sugar, but only to those *producers* of sugar who had complied with the requirements as to notice, application for license and bond provided for in the bounty schedule of the tariff act of 1890, popularly known as the "McKinley Bill."

In the case at bar, the producer of a sugar crop from cane grown and produced within the United States was the late Richard H. Allen, a wealthy sugar planter residing on the Rienzi plantation, in the parish of Lafourche, State of Louisiana, who died on September 19, 1894, after the repeal by Congress of the McKinley Bill, on August 28, 1894. He had filed application for license and bond prior to his death, and had obtained a license to

produce sugar from sugar cane grown within the United States for the year 1894, and had otherwise complied with all the requirements of the then existing tariff legislation relative to sugar bounties. At his death, the three executors under the will, W. F. Collins, Widow Bettie Allen and Ogden Smith, administering the succession jointly, took charge of the Rienzi plantation with the growing crop of sugar cane, and manufactured it into sugar, which they sold on the market of the city of New Orleans. The *net proceeds* of the crops of said Rienzi plantation—whether said crops be of sugar, rice or corn, it matters not—were turned over to Mrs. Widow Bettie Allen, by the executors, under the decree of the Supreme Court of Louisiana interpreting a clause of the will of Richard H. Allen, to the effect that all the revenues from the plantation, after payment of taxes and other charges, "*should go to her credit.*" There was another crop raised by the three executors during the year 1895, which yielded no revenues, but resulted in a deficit of $748.19.

The executors then ceased to work the plantation, and delivered it in January, 1896, to the particular legatees thereof, the Allen heirs, the Smith heirs, and the Widow Bettie Allen, in certain undivided proportions, and these proceeded to sell the same, and to partition the proceeds among themselves.

In the meantime, Congress having passed the above quoted bounty appropriation of 8-10 of a cent per pound on the sugar crop of 1894, the executors collected the same from the government of the United States—$11,569.35, or thereabout—and proceeded to make a distribution thereof among the distributees thereof under the law. But here the three executors could not agree as to the proper mode and method of distribution, nor as to the beneficiaries whom Congress had in view, when the sugar producer had died subsequent to the repeal of the "McKinley bill," and prior to the enactment of the

bounty appropriation bill of March 2, 1895. Two of the executors, W. F. Collins and Mrs. Widow Bettie Allen, adhered to the theory that the whole of said bounty appropriation enured to Widow Bettie Allen, either because she was the particular legatee of the sugar crop, or more properly of the net proceeds of the sugar crop, or because she was, as such particular legatee, the producer and manufacturer of the sugar from sugar cane grown or produced within the United States. The other joint executor, Ogden Smith, took an opposite view of the law which he considered was to indemnify Richard H. Allen, and after death his estate and heirs at law continuing his person, since it was Richard H. Allen who was the sole producer of sugar, having complied prior to his death with all legal requirements relative to notice, application, license and bond, and who was spoliated, when yet alive, on August 28, 1894, by the repeal of the tariff legislation on sugar bounties on the part of Congress.

This divergence between the three joint executors caused them to file two separate and distinct "Accounts and Tableaux of Distribution" in the Probate or District Court of Lafourche parish, State of Louisiana.

Tableau of Collins and Widow Allen, Executors, Record, pp. 2-6.

Tableau of Ogden Smith, Co-executor, Record, pp. 9-21.

More particularly pp. 16-17.

The heirs at law of the late Richard H. Allen inheriting the residuum of his estate were cited and notified of the filing of said two final accounts—which should be considered in the nature of oppositions to one another—and the said two sets of executors prayed for a decree of homologation and approval of their said final accounts respectively.

Petition of Collins and Widow Allen, Executors, Record, pp. 1, 2.

Petition of Ogden Smith, Co-executor, Record; pp. 7-8.

There were three sets of heirs, all nephews and nieces of the decedent, the Smiths, the Allens and the Turners, who appeared in the District Court of Lafourche parish, and took sides with Executor Ogden Smith, accepting his method and mode of distribution of the bounty money, and praying for homologation of his final account, while they strenuously opposed the other final account presented by Executors Collins and Widow Bettie Allen, on numerous grounds based on law; on the will of the deceased, as interpreted and construed by the Supreme Court of Louisiana, and on the facts of the case.

Oppositions of Smith heirs, Record, pp. 22-23.

Oppositions of Aucoin, administrator of T. H. Allen, Record, pp. 27-28.

Oppositions of Turner heirs, Record, pp. 23-26.

The oppositions of said heirs at law were tried together with the oppositions of the tableaux to one another, and the District Judge in a well-considered opinion and decree sustained said oppositions, in so far as the bounty money was concerned.

Opinion and decree of District Judge, Record, pp. 52, 57.

An appeal to the Supreme Court of the State of Louisiana was sued out by Executors Collins and Widow Bettie Allen, and, after trial in said Appellate Court, the decision of the lower Court was affirmed in favor of the heirs at law and opponents.

First decision of Supreme Court of Louisiana, Record, pp. 125, 138, and especially pp. 133, 136.

An application for a rehearing was filed by Executors Collins and Widow Bettie Allen, and was granted by the Court. On the second hearing, the Supreme Court of Louisiana amended its prior decree by reducing the former allowance made to the heirs, by one-half of the

bounty money, which they awarded to Widow Bettie Allen, legatee.

Second decision of Supreme Court of Louisiana, Record, pp. 145–147.

This compromise verdict suited neither party. Hence, Mrs. Bettie Allen, individually and as executrix, and W. F. Collins, executor, sued out a writ of error to the Supreme Court of the United States from that part of the decree which restricted Mrs. Allen to one-half of the bounty fund. And Ogden Smith, on the other hand, individually and as executor, and the heirs at law joining him, likewise prosecuted their writ of error from that part of the decree which called for a division of the bounty fund with Widow Bettie Allen, particular legatee of the net proceeds of the crops, equally by halves.

Petition of Widow Allen et al. for writ of error (Record, pp. 155, 157).

Petition of Ogden Smith et al. for writ of error (Record, pp. 173, 176).

Assignment of errors by Widow Allen et al. (Record, pp. 158, 159).

Assignment of errors by Ogden Smith et al. (Record, pp. 177, 180).

Both sides are therefore before the Court as appellants and appellees, respectively. The only parties to the record who appear in both cases solely as appellees, or defendants in error, are the two sets of disinherited nieces of the testator, the late R. H. Allen, viz.:

1. Mrs. Jennie Boyle, a niece, to whom a legacy of $500 had been made subject to the condition that she should "*have no interest in any other claim.*"

2. Mrs. Bettie De Berry and Mrs. Ellen B. Baker, nieces, belonging to another branch, to whom like legacies of $500 each had been made under similar restrictions.

Will of R. H. Allen (Record, pp. 62, 64—especially 63, 64).

The Supreme Court of the State of Louisiana when called upon to construe and interpret said will had excluded these two branches of heirs (commonly known as the three niêces) from the undisposed residuum of the estate.

Decree of Supreme Court of Louisiana, Record, pp. 112, 121, *and especially* p. 120.

The same rules of exclusion and disinherison were held to apply to the bounty fund in controversy, by both the District and Supreme Courts of the State of Louisiana. Neither Mrs. Boyle, nor Mrs. De Berry and Mrs. Baker have prosecuted writs of error in these cases, and as to them the matter is *res adjudicata*. They have, however, been cited and made defendants in error, and are here as merely nominal parties.

Citation to Mrs. Boyle, Record, p. 170 and pp. 184, 185.

Citation to Mrs. De Berry, Record, p. 171 and pp. 185, 186.

Citation to Mrs, Baker, Record, p. 172 and pp. 183, 184.

No community of property existed between R. H. Allen and wife. They were married separate in property. See Marriage Contract, Article First, Record, p. 107.

Such are the salient facts of the present controversy.

ASSIGNMENT OF ERRORS.

I. That the State Court erred in holding that Widow Bettie Allen, defendant in error, is entitled to and in awarding to her one-half of the bounty fund in controversy, which was paid by the Government of the United States to the executors of succession of Richard H. Allen under the Act of Congress approved March 2, 1895.

II. That the State Court erred in not holding that the estate of the late Richard H. Allen after his death, and his heirs at law upon whom devolved the whole succession and the residuum, after the bequeathing of a few particular legacies in money and property, were not the sole and true beneficiaries and owners of the whole bounty fund or appropriation paid under said act of Congress; and in not awarding to them the whole of said amount in controversy herein, as being entitled thereto solely and exclusively.

III. That the State Court erred in not rejecting as erroneous and unfounded in law, justice and equity, under the facts of the case, any and all claims of Widow Bettie Allen to the said bounty fund or appropriation, or to any part thereof.

IV. That the State Court erred in allowing and awarding to Widow Bettie Allen, as particular legatee of the net proceeds of the crops of the Rienzi plantation, any part of the bounty fund or appropriation in controversy, and in considering her in the light of either a producer or manufacturer of sugar for sugars actually produced and manufactured during the period extending from August 28, 1894, to June 30, 1895, and in treating her as beneficiary or owner of any part of said bounty fund or appropriation in controversy.

V. That the State Court erred in not holding that the late R. H. Allen, before his death, was the sole producer of sugar to be recompensed or compensated for the spoliations caused by the repeal of the law allowing the bounty on sugar, and after his death his general estate and his heirs at law, as his successors to the whole of said bounty fund or appropriation, as the true and legitimate producers and beneficiaries.

VI. That the State Court while correctly deciding and holding that the deceased, Richard H. Allen, by planting, cultivating and growing the crop of sugar cane up to the

date of his death, on September 19, 1894, had thereby fairly earned and become entitled to one-half of the bounty fund or appropriation allowed under said act of Congress and in controversy in the present cause, did improperly and illegally restrict his right, and that of his estate and of his heirs at law continuing his person, to one-half of said bounty fund or appropriation, instead of extending it to the whole, as was meant and intended by said act of Congress.

VII. That the State Court while correctly deciding and holding that the deceased, Richard H. Allen, was a "producer" within the meaning and intendment of said act of Congress, and after his death his heirs at law continuing his person, and awarding to him and them the one-half of said bounty, fund or appropriation, did improperly and illegally restrict his right and that of his estate and of his said heirs at law to the said one-half of said bounty, fund or appropriation, instead of extending it to the whole, as was meant and intended by said act of Congress.

VIII. That the State Court erred in not holding that the late Richard H. Allen, and after his death his estate and heirs at law continuing his person, were the sole "producers" which were meant and intended to be indemnified under said act of Congress.

IX. That the State Court erred in not holding that producers of sugar were first and foremost to be indemnified under said act of Congress. And in not holding that manufacturers of sugar who had not been producers were not contemplated to be indemnified under the provisions of the said act of Congress.

X. That the State Court erred in giving undue importance to the manufacturer who was not a producer of sugar. And that it was not sufficient to hold that the production of sugar was the first or primary consideration, and the manufacture of sugar the second or subsidiary

consideration, in the eye of Congress when passing the law. But that the decision should have been that the production of sugar was the paramount and sole consideration.

XI. That the State Court while correctly deciding that the testator, by reason of his having planted and cultivated the crop at his own expense and with his own funds, had at the time of his death on September 19, 1894, earned the value of the crop, did not go far enough, and erred in holding that he had earned a proportionate share of the bounty fund or appropriation. But that the decision should have been that he had thereby earned the whole of the bounty money or appropriation, amounting to the sum of eleven thousand five hundred and sixty-nine dollars and thirty-five cents or thereabout.

XII. That the State Court, while recognizing that "in determining who was the producer (under the act of Congress), it was not possible to exclude from all consideration the labor applied under the direction of the owner and the amount expended by him," erred in not giving their full weight to these important factors, and in restricting the right of sueh producer to a proportionate amount of the bounty fund or appropriation, instead of extending it to the whole bounty fund or appropriation.

XIII. That the State Court, after having decided the rights of Mrs. Bettie Allen to be those of a particular legatee of the "net proceeds" of the crop which was being cultivated by the executors under the express terms of the will, erred in viewing her in the light of either a producer or manufacturer of the crop, and in granting to her a *pro rata* of the bounty appropriation accordingly.

XIV. That the State Court erred, if it viewed Mrs. Bettie Allen, after the death of Mr. Richard H. Allen, on September 19, 1894, in the light of either a producer or manufacturer of sugar, since the crop of cane was being produced, cultivated and manufactured into sugar by the

executors of the succession of Richard H. Allen, and since she had no interest therein, and did not in any way contribute to or participate in said production, cultivation or manufacture of sugar. But that, on the contrary, her rights were limited to receiving from such executors in cash the net proceeds of sale of such sugar crop, after its production, cultivation and manufacture into sugar by the executors, if any such net proceeds existed, after all expenses, taxes and other charges paid, as expressly provided for by the terms of the will.

XV. That the State Court, while searching for the true beneficiary of the bounty fund, erred in endeavoring to determine the relative value of the interest of each producer, and in not holding that Mr. Richard H. Allen, while alive, and his estate after his death, and his heirs at law continuing his person, were the sole producers of the crop which was subsequently actually manufactured into sugar; and that Mrs. Widow Bettie Allen's rights, as particular legatee of the net proceeds of the crop, were restricted to the profits which would be realized from the sale of the sugar, after all debts paid, and contingent upon such a result, and did not exist otherwise. And that said Court erred in not holding that, under such a state of facts, Mrs. Bettie Allen could never be looked upon either as a producer or manufacturer of sugar, and in not excluding her from the bounty fund and appropriation, either for the whole or for a part, under the aforesaid act of Congress.

Respectfully submitted,

See Assignment of Errors by Ogden Smith et al., Record, pp. 177–180.

Points and Authorities for Turner Heirs, Opponents.

It must first be noticed that there are two separate classes of beneficiaries of sugar bounties in the Act of

Congress of March 2, 1895, and that there are two distinct paragraphs in said act bearing upon the subject matter.

The first paragraph of the act deals with *those producers and manufacturers of sugar* in the United States who had manufactured and produced sugars previous to August 28, 1894, upon which no bounty had previously been paid. To all *such producers and manufacturers of sugar*, a bounty of 2 cents per pound is to be paid. And for that purpose an appropriation of $238,289.08 is made by the act.

The second paragraph of the act contemplates remuneration only to *those producers* who, having complied with all the requirements as to notice, application for license and bond provided for in the bounty schedule of the anterior tariff act of 1890 (McKinley Bill), would have been entitled to receive a license, as provided for in said act. To all *such producers*, a bounty of 8-10 of a cent per pound is to be paid on all sugars actually manufactured and produced in the United States testing not less than 80 degrees by the polariscope, from beets, sorghum or sugar cane grown or produced within the United States during that part of the fiscal year ending June 30, 1895, comprised in the period commencing August 28, 1894, and ending June 30, 1895, both days inclusive.

And for that purpose an appropriation of five million dollars, or so much thereof as may be necessary, is made by the act.

(See Act of Congress of March 2, 1895, Appendix A.)

The first paragraph of the act does not concern us here. The bounty of 2 cents per pound therein provided enured to such sugar producers and manufacturers to whom a bounty was due under the prior McKinley bill on the crop of the year 1893. For at the date of repeal of the McKinley bill, the growing crop of sugar cane of the year

1894 was not yet ripe for manufacture into sugar. There were no manufacturers of sugar on August 28, 1894, except those of the grinding operations of the anterior season, a few of whom were yet unpaid. Hence, the small size of the appropriation—$238,289.08.

The second paragraph of the act is the one which governs the present case. The appropriation therein contained of $5,000,000 was in favor of *producers*—as they stood on August 28, 1894, and not in favor of *producers and manufacturers*. The allowance was made to such sugar planters who had complied with the provisions of the late McKinley bill, and was intended as a supplement or *post-mortem* re-enactment thereof.

The difference in the phraseology of the first paragraph, which deals with the *producers and manufacturers* of the preceding year, and the second paragraph, which relates altogether to the producers of the year 1894, makes it clear that the beneficiaries intended by Congress were the *producers* who were spoliated on August 28, 1894, by the repeal of the McKinley bill. Mr. Allen was one of them. He was alive at that date, and had complied with the requisites of the former bounty legislation. His subsequent death threw the claim into the estate; for the inchoate right against the government, which subsequently ripened into a perfect and complete right, either existed at the time of his death and was included in the succession, or it *accrued* since the opening of the succession, and would again form a part thereof.

The Revised Civil Code of Louisiana provides that—"The succession not only includes the rights and obligations of the deceased as they exist at the time of his death, but all that has *accrued* thereto since the opening of the succession, as also the new charges to which it becomes subject." Article 873 of Revised Civil Code of Louisiana.

None can claim the bounty money, except under and through Mr. Allen. He had obtained a license from the

government to produce sugar, and to him Congress was under a moral obligation to repair the spoliation caused by the change of legislation.

If the claim belonged to Allen, it went into his estate. As such, it fell into the undisposed residuum of the heirs at law, unless specially bequeathed, or unless an accessory to either the land itself or the crop.

There were no universal legatees under the will; and the Supreme Court of Louisiana, when called upon to interpret and construe said will, decreed that the residuum should go to the heirs at law, as in case of intestacy.

Say the Court: "There was no expression in the will following the particular description of the property, after the general description of all corporeal movables, to indicate that the wife was to have the *residuum* of his personal estate, nor is there any indication of any intent to make any other legatee the recipient of this *residuum*. We are forced to the conclusion, from a consideration of the entire instrument, that he intended the balance of his personal estate to go to his legal heirs—a disposition in doubtful meaning which the law favors."

Succession of Allen, 48 Louisiana Annual, 1046.

There being no residuary legatees, but only particular legatees to certain determinate objects, and the heirs at law having been recognized and decreed to be entitled to the *residuum* or unwilled portion of the estate. distributable between the Smiths, the Allens and the Turners, by thirds, equally—which judgment is *res judicata*—it follows that the bounty money enures to them, except it be an accessory to the land, to the crop, or to the net proceeds of the crop. Under what principle of law can a money appropriation by Congress be classed as an accessory to a crop? It is certainly not an immovable by destination, nor by the object to which it applies.

Articles 463, 465, 468, 471, of Revised Civil Code of Louisiana.

The claim against the government, such as it was in its embryonic state, at the time of Allen's death, clearly formed part of his succession. It is only because Allen grew a crop of sugar cane in 1894 and applied for a license under the McKinley bill that a recovery could possibly be had. This claim or right, by operation of law, was transmitted to his legal heirs. The Louisiana Code defines "Succession" as the transmission of the right and obligations of the deceased to the heirs.

Articles 871, 872 of Revised Civil Code of Louisiana.

Whether the bounty claim be considered as existing at the time of Allen's death, as a chose in action, transmissible to his legal heirs as belonging to him, or as a new right *accruing* since the opening of his succession, the result is the same. It falls into the estate and passes to the heirs.

Again, the Louisiana Code declares that succession signifies also that right by which the heir can take possession of the estate of the deceased, such as it may be.

Article 874 of Revised Civil Code of Louisiana.

Under the rule *le mort saisit le vif* the heirs at law inherited this claim—the three disinterested nieces not to be taken into consideration. This seems clear.

The Louisiana Code further provides that "A succession is acquired by the legal heir, who is called by law to the inheritance, immediately after the death of the deceased person whom he succeeds."

"This rule applies also to testamentary heirs, to instituted heirs and universal legatees, but not to particular legatees."

Article 940 of Revised Civil Code of Louisiana.

Widow Allen was only a particular legatee of the net proceeds of the crop.

The Code further provides that "the succession * * * becomes open by death."

Article 934 of Revised Civil Code of Louisiana.

There is no intermediate stage of inheritance. At the death of Mr. Allen, the claim against the government, which was not *in esse*, but only an expectancy coupled with an interest, devolved upon the heirs at law, as part of the unwilled or intestate succession of the deceased.

Such position is in accord with Federal jurisprudence.

The Supreme Court of the United States in a series of cases of claims against foreign governments for spoliations—from Comegys vs. Vasse in 1828, to the recent case of Phelps vs. McDonald—fixes conclusively the following propositions, viz.:

First—That an indemnification for unjust captures is not a donation, but a right.

Second—That the sums awarded to the administrators or syndics of the claimant become assets of his succession or insolvency distributable as such in their hands.

Comegys vs. Vasse, 1 Peters, p. 217.

See also Shepard vs. Taylor, 5 Peters, p. 675.

See also Brevall vs. Bache, 14 Peters, p. 95.

See also Judson vs. Corcoran, 17 Howard, p. 613.

See also Phelps vs. McDonald, 99 U. S., p. 303.

See also English authorities cited in Hall vs. Emerson, 11 Louisiana, p. 8, and particularly Randall vs. Cochran, 1 Vezey, 98.

Evans vs. Charles, Anstruther's Rep. 128.

The foregoing cases involved, most all of them, a question of compensation for spoliations committed by foreign governments.

Third—That equitable claims against our own and foreign governments * * * *were expectancies, coupled with an interest, and as such were property rights*, which passed under assignment in bankruptcy.

This was in accord with Comegys vs. Vasse. 1 Peters, 217; Williams vs. Heard, 140 U. S. Supreme Court, 529.

Can the rule be different if the spoliation be committed by our own government?

Was not the repeal of the McKinley bill, after the issuance of the license, and two-thirds of the year 1894 had gone by, a spoliation of the sugar planters?

Was not the act of March, 1895, passed in view of repairing that great injustice?

Was not the decision of the United States Supreme Court in the bounty cases based upon the same consideration?

Hence, the rule established in the foregoing cases should be applied here.

Hence, bounty moneys as succession assets should descend according to the legal order of successions.

No right, whether legal or equitable, perfect or imperfect, can be lost or annihilated.

"*Hæreditas nihil aliud est quam successio in universum jus quod defnnctus habuit*" (L. 24, Pandects).

In insolvency matters, which are analogous to succession proceedings, it has been held by the Supreme Court of Louisiana that a claim of an insolvent against the Mexican government, represented by a certificate of indebtedness on the Mexican government, passed by a cession to the syndic.

West vs. Creditors, 8 Rob. (Louisiana) 123, 128.

West vs. Creditors, 4 Rob. (Louisiana) 88.

In the recent case of Calder vs. Henderson, the U. S. Circuit Court for the Fifth Circuit of Louisiana held that sugar bounty was property. The case having been taken up to the U. S. Circuit Court of Appeals, an exhaustive decision affirming the decree appealed from was rendered. It was held:

1. That the sugar bounty was not a pure gratuity, or a mere recompense for personal services, but compensation

offered for the purpose of stimulating production. That a producer accepting the offer and complying with the act, becomes party to a *contract* with the government.

2. That a claim for bounty earned by raising sugar is a vested right subject to be sold on execution, and passing to the syndic under our insolvency laws.

Calder vs. Henderson, 4 U. S. Circuit Court of Appeals Rep., p. 584.

Finally, in the bounty cases, it was held that the claims were of a nature which Congress might rightfully decide to constitute a debt of the United States, and that the government of the United States, through Congress, had a right to pay the debts of the United States.

U. S. vs. Realty Co., 163 U. S. 427.

U. S. vs. Gay, 163 U. S. 427.

It can not be pretended that this case is governed by the rule laid down by the United States Supreme Court in Emerson vs. Hall, 13 Peters, 411.

There is no analogy between the two cases.

In the Emerson case the act of Congress was directly in favor of the heirs, Emerson being then dead. Inasmuch as the government was under no obligation, either in law or equity, to compensate him for his meritorious service, it was held that the claim did not go to the administrator as assets, was not liable for the payment of debts, and did not descend to the heirs. The gift was direct to them (13 Peters, 413).

The decision of the Supreme Court of Louisiana, in Hall vs. Emerson, was accordingly reversed (11 Louisiana 1).

Such is not however the case here. Upon what theory can it be claimed that the bounty money is a pure donation to Widow Allen? What title could she possibly have to a chose in action which, whether it were *in esse* at the time of Allen's death, or whether it *accrued* after death, was transmitted by mere operation of law to the heirs at

law not specifically disinherited? Mrs. Allen was neither an universal legatee, nor a residuary legatee, but a mere particular legatee of one-half of the plantation, after its sale, and also of the net proceeds of the crops during all the time the plantation would be in the hands and under the control of the executors prior to its sale. The claim is therefore based on the particular legacy of either the land or the crops, because the bounty would be accessory thereto. If accessory to the land, it enures to all the legatees of the Rienzi plantation (the Smiths and Allens for one-half), and not to Widow Bettie Allen solely. If accessory to the crops, or (using the language of the Supreme Court of Louisiana) to the net proceeds of the crops, this anomalous feature presents itself of an usufructuary's claims being paramount to those of the owners of the very soil which produced the sugar serving as the basis of calculation of such bounty.

Mrs. Allen repudiates the theory that the bounty money is an accessory to the land. But she prefers to have it considered as an accessory to the proceeds of the crop. Her pretensions can be formulated in this syllogism:

1. A legacy carries with it all its accessories. The thing bequeathed shall be delivered with everything that appertains to it, etc. The fruits produced by the thing belong to the owner, though produced by the work and labor of another, etc. Fruits of the earth, whether spontaneous or cultivated; civil fruits—that is, the revenues yielded by property from the operation of law or by agreement—and the young of animals belong to the owner by right of accession. "*On appele fruits civils, c'est-à-dire fruits par la fiction de la loi les revenus qui se percoivent à l'occasion d'une chose*" (Marcadé). Natural fruits are such as are the spontaneous product of the earth. Civil fruits are rents of real property, the interest of money and annuities. All other kinds of revenue or income derived

from property by the operation of law or private agreement are civil fruits (Major premise).

2. The bounty money is a civil fruit appertaining to the legacy. For this bounty was derived or came into existence by operation of law. And, if it did, under the very letter of the law it is a civil fruit, a civil fruit produced by the owner of the cane—the legatee, Mrs. Allen, to whom it was bequeathed, and which was made into sugar under the terms of the act of Congress (Minor premise).

3. Hence, would Widow Bettie Allen, as particular legatee of the crop—or rather of the net proceeds of the crop—be entitled to the whole of the bounty paid by the government to the executors of the estate of R. H. Allen.

The fallacy of the minor premise is glaring. There is no connection between the natural and civil fruits of the plantation with the bounty claim allowed by Congress to sugar planters and producers. Though based on the crop as a means of calculation, and conditioned on the production of the crop by the owner of the plantation, under certain rules, it was a pure gratuity from the government.

The Supreme Court of Louisiana has held that the bounty money was separate and distinct from the crop and the proceeds thereof. It was in a case where a mortgagor had stipulated in a mortgage act that he would pay the bounty money, when collected, to his creditor "just as if the bounty had been a portion of the proceeds of the crop." The bounty was subsequently collected by the syndic of all the creditors. *Held*—"*That the bounty was not a portion of the proceeds of the crop. It was no part of the crop.*"

Delogny vs. Creditors, 48 Louisiana Annual, 488.

The principle laid down by the Supreme Court of Louisiana in that case was reiterated by that Court in this very case. In the second opinion rendered on a rehearing the Court say: "We desire it to be well understood

that in our opinion the bounty money is no part of the crop or the proceeds of the crop. The question was, who was the owner and producer of the crop after the death of the testator? We adhere to the case of Delogny vs. Creditors. In that case, as in the case before us, the owner of the crop was the producer of the crop, but she, Mrs. Delogny, in pledging the crop had not pledged the bounty granted by the government."

Second opinion of the Supreme Court of Louisiana, Record, p. 146.

And in the first opinion rendered in this case the Supreme Court of Louisiana say: "Taking that case (Delogny case) as an illustration, it necessarily results from the argument that the bounty did not in the instant case constitute a part of the crop. As it did not constitute a part of the crop of Delogny, possession of which passed to his mortgagee as a pledge, so in the instant case the bounty did not constitute a portion of the surplus of the proceeds of the crops of 1894 and 1895, over and above their expenses, which passed by the will to Mrs. Allen. Or, in the language of the District Judge, it does not go to Mrs. Allen under the will, but to the heirs as an unwilled portion."

First opinion of the Supreme Court of Louisiana, Record, pp. 134, 135.

It is not correct to say that Mrs. Allen was ever a producer or manufacturer of sugar, or that she ever had possession of the plantation or of the crops thereof.

The fact is that the plantation and crops were placed by the testator in the hands of the three executors, for a term of five years, until sold for a good price, cultivation to go on in the meantime, and the surplus (if any), after the payment of taxes and other charges, to go to the credit of Widow Allen.

The testator had said in his will:

"As I fear property will be very low, I give my executors five years to work for a good price; in the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges, any over that to go Mrs. Allen's credit." See Will of Allen, Record, p. 63.

There was an imperative duty imposed on the executors (if they did not lease) to work the place with the funds of the estate, for account of the estate, with a view of paying taxes and other charges of the estate—the surplus only, or net proceeds, accruing to Widow Allen. This was accordingly done.

How then can it be denied that the executors of the Succession of Allen, as such, were the actual producers and manufacturers of the sugar crop on the Rienzi plantation in the year 1894?

Did not the executors have seizin? Did they not collect from the United States government and administer upon this fund, and charge executors' commission thereon? And Mrs. Allen is one of them.

There were three executors. Their joint seizin excludes the idea of the single possession of the executor-legatee, which is provided for by Art. 1628 of Revised Civil Code of Louisana. The case, therefore, falls clearly within the rule laid down by Art. 1626 of Revised Civil Code of Louisiana.

It is not claimed that Widow Allen ever took possession of the Rienzi plantation and crops as particular legatee. Her possession was as one of three executors, and she could not without judicial authorization change the nature of her possession.

Bird vs. Jones, 5 La. An. 643.
Succession of Frazier, 33 La. An. 594.
Succession of Townsend, 37 La. An. 408.
Succession of Townsend, 38 La. An. 861.
Succession of Frazier, 35 La. An. 381.

Nor could Widow Allen possibly be in possession of the crop, as legatee thereof, unless she was in possession of the plantation itself, which had been bequeathed to two or three sets of legatees, herself included.

The clause of the will above quoted has been construed by the Supreme Court of Louisiana as vesting the "net proceeds" in Mrs. Allen.

Granting that the rights of Widow Allen to such net proceeds were fixed at the death of the testator, this was contingent upon there being "*net proceeds.*" And the fact is that there were no net proceeds for the year 1895, but a deficit of several hundred dollars.

The ownership, the dominion of the crop, never was in Widow Allen. She could not have taken possession thereof and put an end to the seizin of the executors. She only had a beneficiary interest in such crops at the end of the year, and after the executors had rendered their accounts, and her right against them was one *for the accounting of the net proceeds.*

The distinction between *the ownership of a thing and a mere beneficiary right therein* is clearly laid down by the Code.

"The ownership of a thing is vested in him who has the immediate dominion of it, and not in him who has a mere beneficiary right therein."

Art. 489, Revised Civil Code of Louisiana.

"La propriété d'une chose est dite appartenir à celui qui en a le domaine direct, et non à celui qui n'en a que le domaine utile."

Art. 481, Civil Code of Louisiana of 1825 (French text).

The test of ownership is the right to destroy—*jus abutendi*—which Mrs. Allen could not exercise to the prejudice of the trust imposed on her and the other two executors by the will to work the plantation, so as to pay taxes and other charges, putting aside the surplus only to her credit.

Congress when adopting the act of March 2, 1895, never intended that the terms "producer and manufacturer" should be disconnected from the ownership. They must be combined.

Mrs. Allen's right is that of a beneficiary, entirely independent of the ownership, which remained vested in the succession of Allen, represented by the three executors who had the seizin of the estate under the will.

All further discussion as to the nature and extent of the legacy to Widow Allen is closed by the final decree of the Supreme Court of Louisiana in the Allen will case to the effect that she was "entitled to the net proceeds as long as the plantation remained in the hands of the executors, and the proceeds of the crop growing on the place at the time of death passed to the wife" (syllabus).

Succession of Allen, 48 Louisiana Annual, 1037.

Res judicata pro veritate accipitur.

The consideration of the assignments of error and of the various grounds on which they are based is next in order.

FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR.

It was unfortunate that the case should have been reopened by the Supreme Court of Louisiana. First impressions are usually safe and correct. They are here clearly favorable to the heirs at law; and the Supreme Court of Louisiana, accordingly, in its first decision affirming the decree of the District Court of Lafourche parish, sustained the oppositions of the heirs, and rejected the pretensions of Widow Bettie Allen as unsound in law,

But, on the rehearing, the Supreme Court of Louisiana, by lending their ears to the enchanting songs of the sirens of sophistry, came very near wrecking the bark of jurisprudence in a whirlpool of judicial error. The decree correctly lays down the propositions, that "the end of

the bounty was to encourage the production of cane," and that "the act places the manufacture of sugar, in the matter of the bounty scheme, in a secondary position;" and, further, "that production was a first, and manufacture a secondary consideration."

Opinion of Supreme Court of Louisiana on Rehearing. Record, p. 145.

The Court, however, fell into a grave error when it extended the rights of Mrs. Allen, and came to look upon her as the producer of the crop after the death of R. H. Allen, in order to apportion the bounty money.

It has already been said that Mrs. Allen could not be a producer, because she was not the owner of the crop. She had a mere beneficiary right in the net proceeds of the crops of the estate, which was under the management of the three executors. The extent of her rights as such beneficiary had been fixed and determined irrevocably by the Supreme Court of Louisiana in the Allen will case (48 Louisiana Annual, 1047). Such rights resolved themselves into an action for the accounting of the revenues derived from the sale of the crop, and not for the crop itself, which was yet in the hands of the executors and unsold. How, then, can it be said that she was a producer? If she be the producer, what becomes of the trust imposed upon the executors to work the plantation, with a view of paying all the charges thereon, turning over to her only the surplus left, whatever it be? If the executors worked the plantation, as they had been enjoined by the will to do, they were the producers as the representatives of the estate of Allen. And if they were the producers, Mrs. Allen was not.

The plantation and growing crop were in possession of the executors and under their administration. How could a mere legatee of a particular object be in possession, until a delivery of the legacy had taken place? How could such

legatee have produced a crop of sugar, when she had not yet been put in possession thereof?

The evidence shows that the plantation was only turned over to the legatees thereof on January 29, 1896. And further, that the crop was administered by the executors, who manufactured the same into sugar.

See admissions, Record, pp. 30-31.

FOURTH AND FIFTH ASSIGNMENTS OF ERROR.

In its opinion on the rehearing the Supreme Court of Louisiana after premising that "production was a first and manufacture a secondary consideration," and after having attempted to present Mrs. Allen in the light of a producer after the death of Allen, proceeds thus: "As an estimate, we believe that on the well-employed plantation, such as we think this was, the cost of cultivation is about equal to the cost of manufacture, and that upon that basis, the heirs at law are entitled to one-half of the bounty, and the legatee to the other half."

Here, the Supreme Court seems to have apportioned the bounty—not between two different producers at two different dates, but between the producer on the one hand, and the manufacturer on the other hand. Hence, the Court appears to have abandoned the idea that Mrs. Allen was a producer, and now looks upon her as a manufacturer. Hence, manufacture is entitled to prorate with production. What a contradiction with the premises: "Production was a first, and manufacture a secondary consideration!"

SIXTH AND SEVENTH ASSIGNMENTS OF ERROR.

The Supreme Court of Louisiana, in its final decree on the rehearing, erred egregiously by adopting its method of apportionment between the producer (Mr. Allen) and the manufacturer (Widow Allen, legatee), since the manu-

facturer "*per se*" is not the contemplated beneficiary under the act of Congress in its second paragraph. The producer alone is legitimate heir to the munificence of the government. The Supreme Court of Louisiana had a clear insight of such intent (paragraph 2) when at the outset they proclaimed that production was king and manufacture a vassal.

Production, as is well kuown, is at an end on September 19. In the words of the Supreme Court: "The cane has been cultivated and laid by; the crop is left to the fertility of the soil, the fall of the sunbeams, and the soft architectural hands of the showers."

Granted. Why then apportion the bounty, when the producer alone had, at the date of September 19, earned his reward, and was resting on his laurels?

Eighth Assignment of Error.

The next assignment of error is to the effect "that the State Court erred in not holding that the late R. H. Allen, and after death, his estate and heirs at law continuing his person, were the sole '*producers*' who were meant and intended to be indemnified under said act of Congress."

It is admitted by all that at the repeal of the McKinley bill, on August 28, 1894, Mr. Allen being then alive, he alone was the producer. The cultivation of the cane crop had already terminated, the time for manufacture into sugar was fast approaching. His compliance with all legal requirements had given him a vested right, as it were—certainly an equitably claim to a bounty. If it can truly be said that the repeal of the McKinley bill was a spoliation, to him alone was Congress under obligation to repair the wrong.

Mr. Allen was the spoliated planter and producer whom Congress meant to remunerate. His right necessarily excluded that of the widow. There can not be two different beneficiaries. If Widow Allen was meant to be the

beneficiary, because she manufactured into sugar the crop of 1894, during the latter part of the period comprised between August 28, 1894, and June 30, 1895, as claimed, then what becomes of the clause which restricts the provisions of the act to such producers who had complied with all prior requirements relative to application for license, notice and bond and issuance of license? And if Mr. Allen was meant to be the beneficiary, because he had complied with all such requirements, how can his widow, or the purchaser of his plantation, or any one else who may have manufactured the cane into sugar, after his death, lay any possible claim to the bounty money, except under and through Mr. Allen, either by will or under the law?

And who can claim under and through Mr. Allen, except his heirs at law? The widow, as a mere legatee, could not compete with the heirs at law whom the Louisiana Supreme Court had declared to be entitled to the residuum. They were the successors of the deceased and and stepped into his shoes. The legal maxim, "*Le mort saisit le vif*," is the counterpart of the political axiom: "*Le roi est mort, vive le roi.*" In the legal domain, as well as in the governmental world, an interregnum is equally odious.

Ninth Assignment of Error.

Even if it could truthfully be said that Widow Allen was the manufacturer (to the exclusion of the estate of Allen)—which is not admitted—the fact yet remains that not having been a producer she was not the person whom Congress meant to indemnify by the second paragraph of the act.

Tenth Assignment of Error.

Undue importance was given by the State court to the manufacturer who was not a producer. The decision,

when construing the second paragraph of the act of March 2, 1895, should have been that the production of sugar was the paramount and sole consideration. And why? Because Congress wanted to restore the "*status quo*" of August 28, 1894. Nothing more. At the time, there were *producers* who suffered great pecuniary injury by the repeal of the McKinley bill. As to them, the repealing statute possessed all the obnoxious features of an "*ex post facto*" law. Not so in regard to *manufacturers* who, not having yet come into existence, could have no fault to find with prospective legislation.

ELEVENTH ASSIGNMENT OF ERROR.

The State court commited a grave error in apportioning the bounty between Mr. Allen's estate and Widow Bettie Allen, on the theory that each had earned a proportionate share of the bounty fund or appropriation—taking September 19, 1894, as the line of demarkation. In such a view of the case, Widow Allen should have had a *title of her own*, independent and not derivative from that of R. H. Allen. Such title she did not possess. She is not a direct participant in the gratuity of the Government, by reason of any just, legal or equitable title, right or claim existing in herself, independently of any other person or persons.

Whatever she claimed is only by virtue of the title, right and equitable claim of R. H. Allen, as the producer designated by congressional legislation. She can not claim under the will, because bounty money is not accessory to the legacy of a crop, and still less to the legacy of the net proceeds of a crop. She can not claim under the law, because the residuum of the estate goes to the legal heirs as an unwilled asset.

Twelfth Assignment of Error.

The Supreme Court of Louisiana, in the opinion on the rehearing, say: "In determining who was the producer, it was not possible to exclude from all consideration the labor applied under the direction of the owner and the amount expended by him."

Yet, their full weight is not given to these important factors. A proportionate share of the bounty is allowed to such owner and producer, when the full award had been earned free from contribution with the manufacturer under the express terms of the 2d paragraph of the Act of Congress.

Thirteenth Assignment of Error.

The State Court committed a serious error in viewing Mrs, Allen in the light of either a producer or manufacturer of the crop, and in granting to her, as such, a *pro rata* of the bounty appropriation. It had already, in its previous decree construing the terms of the will, restricted the rights of Mrs. Allen to the net proceeds of the crop. In the language of the decree:

"It is plain from the terms of the will that the testator "intended that the plantation should be sold, and the "proceeds distributed as directed by him.

"The legatees could not sue immediately after the "death of the testator for a partition in kind, as this "would have been contrary to the positive mandate of "the testator. The plantation was directed to be sold in "the most positive language. The legatees then were "only interested in the proceeds of the sale.

"No other reasonable interpretation can be given to "the language of the testator. If the plantation should "have been sold with the growing crop, it would have "passed with the place and increased the proceeds.

"The judgment appealed from is amended, so as to give

" Mrs. Bettie Allen the net proceeds of the crop on the " ' Rienzi Plantation' for the year 1894."

Succession of Allen, 48 La. An., pp. 1047, 1050.

It is evident that the interest of Mrs. Allen, as a legatee of her husband, is involved in the net proceeds of the crop, and not in the crop in kind. The very signification of the term *proceeds* excludes the pretension of Mrs. Allen that the crop grown on the Rienzi plantation was her own.

Proceeds, according to Bouvier's Law Dictionary, Vol. II, are: " Money or articles of value arising from the " sale of property; the sum, amount or value of the goods " sold or converted into money."

In Belmont vs. Dowvert, 35 N. Y. Super. Ct. 208, " proceeds " was held to mean the " amount of money " that in future would be obtained for the property upon " a disposition of it by sale."

The right of Mrs. Allen in the crop of sugar, both under the will of Allen and under the decree of this Court, does not carry with it the right or ownership of the " thing."

The distinction between the ownership of a thing, and a beneficiary right therein, under the laws of Louisiana, has already been noticed.

Art. 489, Revised Civil Code of Louisiana.

Art. 1626, Revised Civil Code of Louisiana.

The net proceeds of the crop decreed to Mrs. Allen did not vest ownership of the crop itself, from which said proceeds are derived by sale.

Her right of action for the net proceeds of the crop being one of accounting, gives no right to the " thing" which by its sale established the proceeds.

The domain of interpretation can no longer be searched for an explanation justifying a change in the decree. The domain has been thoroughly explored without any new discovery.

Fourteenth Assignment of Error.

The Supreme Court of Louisiana, in its decree on rehearing say: "But there are other clauses of the will which, in our view, extend her right, and show that she was the producer after the death of Mr. Allen. She paid all the expenses of the crop; she was to receive the proceeds under the terms of the will; indeed, she was the owner of the crop. She can well be considered, as we think, the producer."

This position is not tenable. The evidence in the record shows that it was not with her moneys that the crop was made, harvested and marketed.

The sugar crop of 1894 was made by Mr. Allen, and after his death by his estate—the executors having been thereunto expressly directed by the terms of the will. It was the money of the estate, every cent of it, which went to complete the crop of 1894, and not the funds of Widow Allen, who had none whatever, and who, on the contrary, borrowed and drew from the unwilled cash in the New Orleans banks belonging to the heirs at law under the prior decision of the Court, to the extent of $3725.22 (see testimony of Smith and Collens, and Knobloch, Record p, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,.

It is admitted by all that after Mr. Allen's death the executors took $19,730.26 from the funds in bank constituting the residuum and accruing to the heirs at law, and used the same to complete and market the crop on Rienzi plantation in 1894. This amount, which is fully detailed in Statement A, annexed to Smith's account of February 5, 1895, was subject to a *restitutio ad integrum* and was reimbursed to the residuum and distributed to the heirs at law on June 12, 1896. (See admissions and receipts offered in evidence, Record, pp. 30, 31.)

It further appears that after February 5, 1895, the executors took $2766.13 additional from the funds in bank constituting the residuum, which are yet to be re-

imbursed to the heirs at law. (See Statement X, Record, p. 6.)

It is difficult to see how it can be pretended that Widow Allen contributed in any sense—either by her labor and industry, or with her moneys, to the producing and manufacturing of the crop of 1894.

She furnished no moneys to make the crop, but, on the contrary, drew for her personal wants a sum of $3725.22 against the funds belonging to the heirs at law, diminishing *pro tanto* what might have been necessary to save the crop (Record, p. 43).

How can Widow Allen claim that she paid for the manufacture of the sugar and that the executors merely acted as her representatives, unless she pretends to be entitled to the "*gross proceeds*" of the crop? But the Court allowed her only the "*net proceeds*." The expenses were not hers; and in case of a deficit, the loss would have fallen on the estate and not on her. This is the position assumed by her and her co-executor Collens, when dealing with the crop of 1895, which showed a deficit of $748.19, which they throw on the estate.

(See account of Collens and Widow Allen, Rec., pp. 2, 3, 4, 5, 6.)

Why should a different rule obtain in regard to the crop of 1894, which gave a large surplus?

Circumstances alter cases. When there was a deficit in 1895, the crop belonged to Allen's estate, which was charged with all expenses. But when the bounty on the crop of 1894 is dealt with—presto! a change of front occurs: The title is in Mrs. Allen, and it is by her that the crop is produced, matured, harvested and manufactured. And the executors are dumb spectators recreant to their trust!

Consistency, thou art a jewel!

Fifteenth Assignment of Error.

Our last assignment of error involves the following proposition: "That the State Court, while searching for the true beneficiary of the bounty fund erred in endeavoring to determine the relative value of the interest of each producer, and in not holding that Richard H. Allen, while alive, and his estate after his death, and his heirs at law continuing his person, were the sole producers of the crop which was subsequently actually manufactured into sugar; and that Widow Bettie Allen's rights, as particular legatee of the net proceeds of the crop, were restricted to the profits which would be realized from the sale of the sugar, after all debts paid, and contingent upon such a result, and did not exist otherwise. And that said Court erred in not holding that, under such a state of facts, Mrs. Bettie Allen could never be looked upon either as a producer or manufacturer of sugar, and in not excluding her from the bounty fund and appropriation, either for the whole or for a part, under the aforesaid act of Congress."

In its original decision the Court had held otherwise. To use their own words: "Whatever claim the testator had previously to the bounty had been completely annihilated by the repeal of the bounty law, and no right or claim thereto passed to Mrs. Allen as special legatee and beneficiary of the net proceeds of the crop of 1894. And when in March, 1895, the second bounty act was passed * * * the crop of 1894 had been gathered and sold. On this statement it seems evident that the avails of the bounty received a destination specially indicated in the act of Congress—that is to say, to those persons who had complied fully with the provisions of the former bounty law and had produced and manufactured the sugar previous to the repeal of that law on August 28, 1894. When the executors took charge of the estate the bounty law was

repealed, and all they did subsequently was to comply with the rules and regulations specified in the act and collect the money conformably thereto. When collected, it passed into their possession and custody as an unwilled asset of the deceased, and must pass to the account of the legal heirs."

Original opinion of Supreme Court of Louisiana, Record, p.136.

How broad the divergence between the first and second opinion! Why should the award originally to the heirs for the whole have been subsequently reduced by one-half in favor of Widow Allen? Evidently, in a spirit of compromise.

Compromise is always violative of principle.

In this instance, the compromise decree rendered on rehearing is in contravention with three legal principles established by the prior decree of the Court:

1. It confounds the crop proper with the net proceeds of the crop—a distinction which had been carefully observed in the anterior rulings of the Court.

2. It overlooks the joint tenure of the three executors and their seizin of the plantation, with the growing crops thereon, for a period of five years, under the terms of the will. The Court in its first opinion had said; "To our minds the conclusion is clear that the will contemplated and dealt with the rent or cultivation of the plantation *after* the death of the testator and during such a period of time as it might remain under the administration of the executors pending sale; that as a necessary consequence, the taxes and other charges to which the testator referred were those to be incurred during their incumbency, and it is therefore obvious that it was the *resulting balance*, after their deduction, that the testator desired his surviving widow should have. He contemplated that these planting operations might continue for five years, and

should that have been the case, she would have been entitled to the resulting balance of each year's operations."

First opinion of Supreme Court of Louisiana, Record, p. 133.

How then could Widow Allen be viewed in the light of a producer and manufacturer after the death of Allen? How could she be in possession of the crop for her own account, as the producer and manufacturer thereof, without violating her trust, as one of the three joint executors? The law of Louisiana prohibited such a change of front. (5 Louisiana Annual, 643; 33 Louisiana Annual, 594; 35 Louisiana Annual, 381; 37 Louisiana Annual, 408; 38 Louisiana Annual, 861.)

3. It enlarges the circle of the beneficiaries under the act of Congress, so as to include producers and manufacturers subsequent to the repeal of the McKinley bill, when the prior decree had restricted the scope to such producers "who had complied with the provisions of the former bounty law and had produced and manufactured the sugar *previous to the repeal of that law* on August 28, 1894." (First opinion of Supreme Court of Louisiana, Record, p. 136.)

In such a state of conflict, the palm (as we believe) should be awarded to the original opinion of the Court. It had the merit of being in accord with the well reasoned opinion of the District Court, as well as with the anterior decree of the Court in the Allen will case, and with the very phraseology and evident intent of the second paragraph of the act of Congress.

The Court, on the rehearing, having been drawn by the sophistry of argument into a labyrinth of perplexities failed to find in its adherence to the original opinion a guiding thread of Ariadne!

For all of which reasons, we respectfully pray that the final decree of the Supreme Court of Louisiana be an-

nulled, avoided and reversed, and that the former decree of said Court affirming the decree of the District Court for the parish of Lafourche awarding the whole bounty appropriation to the heirs at law not disinherited by the will, the Smith heirs, the Allen heirs, and the Turner heirs, equally by thirds, in accordance with the final account and tableau of distribution of Ogden Smith, co-executor, be reinstated and adopted as the final decree of this Honorable Court.

Respectfully submitted,

HENRY CHIAPELLA,

Of Counsel for J. B. and W. A. Turner. Opponents, Defendants in Error in Suit No. 168, and Plaintiffs in Error in Suit No. 176.

APPENDIX A.

Extracts from Act of Congress of March 2, 1895.

Bounty on Sugar.—That there shall be paid by the Secretary of the Treasury *to those producers and manufacturers of sugar* in the United States * * * a bounty of two cents a pound on all sugars * * * manufactured and produced by them previous to August 28, 1894, and upon which no bounty has previously been paid; and for this purpose, the sum of $238,289.08 is hereby appropriated, or so much thereof as may be necessary.

That there shall be paid to those *producers* who complied with the provisions of the bounty law, as contained in schedule E of the Tariff Act of October 1, 1890, by filing the notice, application for license and bond therein required, prior to July 1, 1894, and who would have been entitled to receive a license, as provided for in said act, a bounty of eight-tenths of a cent per pound on the sugars actually manufactured and produced in the United States testing not less than 80 degrees by the polariscope, from beets, sorghum or sugar cane grown or produced within the United States during that part of the fiscal year ending June 30, 1895, comprised in the period commencing August 28, 1894, and ending June 30, 1895, both days inclusive; and for this purpose, the sum of *five million dollars*, or so much thereof as may be necessary, is hereby appropriated; *provided*, that no bounty shall be paid to any person engaged in refining sugars which have been imported in the United States, or produced in the United States, upon which the bounty herein provided for has already been paid or applied for.

APPENDIX B.

Extracts from McKinley Bill [Tariff Act of 1890.]

The producer of said sugar to be entitled to said bounty shall have first filed prior to July 1 of each year with the Commissioner of Internal Revenue a notice of the place of production, with a general description of the machinery and methods to be employed by him, with an estimate of the amount of sugar proposed to be produced in the current or next ensuing year, including the number of maple trees to be tapped, and an application for a license to so produce, to be accompanied by a bond in

a penalty, and with sureties to be approved by the Commissioner of Internal Revenue, conditioned that he will faithfully observe all rules and regulations, that shall be prescribed for such manufacture and production of sugar.

The Commissioner of Internal Revenue, upon receiving the application and bond hereinabove provided for, shall issue to the applicant a license to produce sugar from sorghum, beets or sugar cane grown within the United States, or from maple sap produced within the United States, at the place and with the machinery and by the methods described in the application; but said license shall not extend beyond one year from the date thereof.

APPENDIX C.

EXTRACTS FROM FINAL ACCOUNT OF OGDEN SMITH, CO-EXECUTOR.

III.

THE BOUNTY MONEY.

Received from the United States government for bounty on sugar crop made on the "Rienzi" plantation in 1894 by check of the United States Treasurer on the Assistant Treasurer in New Orleans and deposited in the Louisiana National Bank in New Orleans, dated August 3, 1896, for the sum of eleven thousand five hundred and sixty-nine $\frac{35}{100}$ dollars, $11,569.\frac{35}{100}$.

This fund is chargeable with the following amounts paid by the executors:

October 8, 1894. L. J. Souer, bounty bureau	$15 00
November 16, 1894, L. J. Souer, bounty bureau	29 45
December 6, 1894, L. J. Souer, bounty bureau	27 90
December 8, 1894, L. J. Souer, bounty bureau	27 55
January 12, 1895, L. J. Souer, bounty bureau	69 30
January 26, 1895, Charles Janvier, manager bounty bureau	43 75
February 12, 1895, L. J. Souer, bounty bureau	90 00
April 24, 1895, L. J. Souer, bounty bureau	6 65
Lafourche Comet, printing	1 25
T. A. Smith, two trips to New Orleans	12 00
Expenses on sugar samples	3 85
Chas. J. Baker, notarial fees	10 00
	$336 70
W. F. Collins, co-executor, his commission, one-third of 2½ per cent. on $11,569.35	96 41
	$433 11
Net balance for distribution	11,136 24
	$11,569 35
Net balance for distribution as aforesaid	$11,136 24
Net amount bounty money for distribution	11,136 24

The bounty money, being an unwilled asset, must be distributed among the legal heirs who have not been cut off by the will, viz.:

1. To the estate of Thos. H. Allen, Sr., a deceased brother of testator, represented by J. Louis Aucoin, of the parish of Lafourche, administrator, one-third of $11,136.24	$3,712 08—	$3,712 08
2. To the two children of Mrs. Myra Turner, a deceased sister of testator, to each one-half of one-third, as follows:		
John B. Turner	1,856 04	
Wm. A. Turner	1,856 04	
		$3,712 08
3. To the five children of Mrs. Cyuthia Smith, a deceased sister of testator, one-fifth of one-third, as follows:		
Ogden Smith	$742 41⅘	
T. A Smith	742 41⅘	
Gaston Smith	742 41⅘	
Fred. W. Smith	742 41⅘	
Mrs. Nellie Houchens	742 41⅘	
		$3,712 08
		$11,136 24

APPENDIX D.

Extracts from Opinion of District Judge.

"I am clearly of the opinion that the bounty money forms no part of the crop proper, or the proceeds thereof. Though based on the crop, as a means of calculation, and conditioned on the production of the crop by the owner of the plantation, under certain rules, it was a pure gratuity from the government * * * It does not, therefore, go to Mrs. Allen under the will, but to the heirs as an unwilled portion.

* * * * * * * * *

"The bounty was given after the death of the deceased, but conditioned on his prior fulfilment of certain prerequisites prescribed by the McKinley bill; but the license was obtained and the equitable claim, in payment of which the allowance of the government was made, had been created prior to the death of the testator. The gift was to the testator or his estate, and not to his heirs, and consequently formed part of his estate." Record, pp. 55, 56.

APPENDIX E.

Extracts from First Decree of Supreme Court of Louisiana.

"The claim for bounty had not been collected when the succession was last before us. It was a gratuity from the government, notwithstanding it was based upon an estimate of the crop, as a means of calculation, and predicated upon the production of a crop by the owner thereof, under rules and regulations which were established by the Treasury Department.

"The allowance of the bounty was, by the government, conditioned on the fulfilment by the deceased of certain prerequisites, though payment of it was not made until after his death and subsequent to the filing of the executor's provisional accounts. The equitable claim of the deceased to the bounty had been created during his lifetime, and the license obtained, and all the conditions precedent had been complied with; though no mention of it was made in the will.

"It seems quite clear, to our minds, that the bounty money which was collected from the government by the executors formed no part of the crops of 1894 and 1895, nor of their proceeds. It was not *in esse* at the time those crops were grown and gathered.

"The executors did nothing but make the necessary proofs preparatory to its collection and receive payment of the money. It must consequently be classed an unwilled asset of the deceased, and not as part of the net proceeds of the crop of 1894, passing under the will to Mrs. Bettie Allen. * * * * * * *

"When the executors took charge of the estate the bounty law was repealed; and all they did subsequently was to comply with the rules and regulations specified in the latter act and collect the money conformably thereto.

"When collected, it passed into their possession and custody, as an unwilled asset of the deceased, and must pass to the account of the legal heirs; this, of course, results in charging to the general estate all the expenses that were incident to the collection of the bounty claim in 1895, as well as those which were engendered in 1894 preparatory to the collection, prior to the passage of the repealing statute. * * *

"From the foregoing provisions, it is clear that all the unwilled assets of the deceased, including the bounty money, fell into the succession, or general estate, whether same were *in esse* at the time of the ancestor's death, or arose into existence subsequently, and constituted the *residuum*, from participation in which the three disinterested legal heirs are precluded."

Record, pp. 133, 134, 136, 137.

APPENDIX F.

Extracts from Second Decree of Supreme Court of Louisiana, on Rehearing.

* * * The end of the bounty was to encourage the *production* of cane.

It devolved upon us to determine by whom the cane was produced.

In our judgment, after carefully reading the act, it is evident that the producer was to be the first to receive the benefit of the bounty.

It devolved upon him, in order to recover the bounty, to comply with certain formalities.

The act (although it includes the manufacture of cane into sugar as one of the essentials) places the manufacture of the sugar, in matter of the bounty scheme, in a secondary position.

In other words, in our view, production was a first, and manufacture a secondary consideration.

Each, however, was essential, in order to enable the producer to recover the bounty.

* * * * * * * * *

* * * After having decided that to the date already mentioned the testator was the producer, we applied ourselves to ascertain by whom this producer was succeeded as a producer, whether it was Mrs. Bettie Allen, as legatee, or the legal heirs. * * *

* * * We desire it to be well understood that, in our opinion, the bounty money is no part of the crop, or the proceeds of the crop. The question was, who was the owner and producer of the crop after the death of the testator? We adhere to the case of Delogny vs. Her Creditors, 48 Louisiana Annual, 488. * * *

* * * It is well known everywhere—in Louisiana at any rate—that the labor and expense of cultivating a cane crop are about at an end on September 19. The cane has been cultivated and laid by; the crop is left to the fertility of the soil, the fall of the sunbeams and to the soft architectural hands of the showers. As an estimate, we believe that on the well employed plantation, such as we think this was, the cost of cultivation is about equal to the cost of manufacture, and that upon that basis the heirs at law are entitled to one-half of the bounty, and the legatee to the other half. We have adopted this basis, because we think it is fair and just to all the interested parties, and also because it concerns the State and heirs and legatees that there shall be an end to lawsuits. * * *

See Record, pp. 145, 146, 147.

APPENDIX G.

Extracts from Will of R. H. Allen.

I give to my dear wife, Bettie Allen, all my corporal movables, such as furniture, bedding, linen, silverplate, chinaware, etc., all my stock of cattle, all my horses and carriages * * *

In addition to the above gifts, I give to my dear wife, Bettie Allen, $4000 worth of city of New Orleans bonds—4 per cent. interest-bearing bonds with coupons. I give her also £2350 in the hands of Baring Bro. & Co., Limited, more or less. * * *

I give to my wife, Bettie Allen, ½ of my Rienzi plantation and ½ of all tools, mules, etc. The names of my executors, etc., will be named hereafter. My executors shall have 1 to 5 years to sell and close up the estate, as I fear property will be very low and dull. They can sell part cash, part on time, 8 per cent. interest, with vendor's lien. I will that my wife do have ½ of everything belonging to Rienzi, except the claim due me by the U. States. That and other property I will speak of further on. * * *

* * * I appoint as my executors Ogden Smith and W. F. Collins, residing on Rienzi plantation. I also appoint Mrs. Bettie Allen executrix. I give them full power to sell Rienzi plantation, whenever they find a good offer. All the property there belonging, when it is sold, ½ of all the proceeds, cash, notes, etc.. is to belong to my wife, Bettie Allen.

The other ½ will be spoken of hereafter. As I fear property will be very low, I give my executors 5 years to work for a good price. In the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges, any over that to go to Mrs. Bettie Allen's credit. * * *

* * * My three nieces, Mrs. Jennie Boyle, Mrs. Bettie De Berry, Mrs. Ellen B. Baker, have received each $500. I will that they receive $500 more in cash, and have no interest in any other claim.

(See will of Allen, Record, pp. 62, 63, 64.)

APPENDIX H.

Extracts from Decree of Supreme Court of Louisiana in the Allen Will Case.

"There was no expression in the will following the particular description of the property, after the general description of 'all corporeal' movables, to indicate that the wife was to have the residuum of

his personal estate; nor is there any indication of any intent to make any other legatee the recipient of this residuum. We are forced to the conclusion, from a consideration of the entire instrument, that he intended the balance of his personal estate to go to his legal heirs, a disposition, in doubtful meaning, which the law favors."

Succession of Allen, 48 Louisiana Annual, 1046.

"It is plain from the terms of the will that the testator intended that the plantation should be sold and the proceeds distributed as directed by him. Speaking from the time of his death, for the future sale of the property, he said to his executors that they should sell the Rienzi plantation and distribute the proceeds; and until they did sell it, the proceeds should go to the wife. The legatees could not sue immediately after the death of the testator for a partition in kind, as this would have been contrary to the positive mandate of the testator. The plantation was directed to be sold in the most positive language. The legatees then were only interested in the proceeds of the sale. The net proceeds belong to the wife, from the time of the death of the testator until the sale of the place. No other reasonable interpretation can be given to the language of the testator. If the plantation should have been sold with the growing crop, it would have passed with the place and increased the proceeds."

Ibid. 1047.

"The judgment appealed from is amended so as to give Mrs. Bettie Allen the net proceeds of the crop on the Rienzi plantation for the year 1894." * * *

Ibid. 1050.

Record, pp. 118, 121.

APPENDIX I.

EXTRACTS FROM MARRIAGE CONTRACT OF R. H. ALLEN BEFORE CENAS, NOTARY PUBLIC, JUNE 23, 1858.

"ARTICLE FIRST.

"It is hereby determined that the said intended husband and wife shall be separate in property, and that all property of whatsoever description now belonging to or which may hereafter be acquired by either party shall be, and continue under the separate and exclusive administration of said party respectively, without any exception or reservation whatsoever.

"And to this end and purpose, the said parties respectively renounce all laws and statutes of this State, establishing a community of acquets and gains between husband and wife."

See Marriage Contract, Record, p. 107.

APPENDIX J.

Admissions of Counsel.

It is admitted by all parties that due publication of the two final accounts have been made and published.

It is agreed that the two accounts shall be considered as petitions and oppositions one to the other.

It is admitted that the bounty of 1894 was applied for by R. H. Allen before his death, and that he obtained a license under the law of 1890.

It is admitted that the McKinley or bounty bill was repealed on or about the 28th of August, 1894, after the application for bounty had been made. The act authorizing the payment of the $\frac{5}{10}$ of 1 per cent was passed on the 2d of March, 1895, on the crop of 1894.

It is admitted that R H. Allen died on the 19th of September, 1894, and, thereafter, the crop was administered by his executors, who manufactured the same into sugar.

It is admitted that the gross proceeds of the crop of 1894, outside of the bounty, was the sum of $56,072.28.

It is admitted that the amount of the bounty paid by the United States on the crop of 1894 was the sum of $11,569.35.

It is admitted that the gross proceeds of the crop of 1895 is $30,974.05.

It is admitted that the cost of making, harvesting and selling the same was $31,722.24, and there was the deficit on that crop of $748.19—on the crop of 1895.

It is admitted that the plantation has been turned over to the legatees under the will on the 29th of January, 1896.

It is admitted that the government claim against the government of the United States has been turned over to the legatees.

It is admitted that the household furniture, cattle, etc., *was* turned over to Mrs. Allen under the will.

* * * * * * * * *

(See admissions of counsel, Record, pp. 30-31.

APPENDIX K.

Agreement of Counsel as to Transcript of Appeal.

It is hereby stipulated and agreed between the undersigned counsel representing all the parties in interest to the several writs of error herein obtained to the Supreme Court of the United States from the final judgment hereinbefore rendered by the Supreme Court of the State of Louisiana, as follows, to-wit:

1. The writs of error may be prosecuted jointly, and onl
script prepared and filed in the Supreme Court of the Unit
2. The transcript already prepared by the clerk of the Su
of Louisiana, to which this stipulation is attached, is agreed
plete transcript, with the understanding that, subject to the
Supreme Court of the United States in such cases made a
any party to this stipulation may at any time supplement t
script by filing such addttional part or parts of the original
may deem necessary.

All the costs incidental to the prosecution of the writs of
Supreme Court of the United States shall be paid out of t
"bounty fund" now in the hands of the executors of th
before any distribution thereof shall be made (Record, pp.

New Orleans, La. Dec

Henry C

attorney for Ja

Defendants in error

and plaintiffs in erro

SUPREME COURT OF THE UNITED STATES.

No. 168.

MRS. BETTIE ALLEN ET AL.,
Plaintiffs in Error,

versus

OGDEN SMITH ET ALS.,
Defendants in Error.

No. 176.

OGDEN SMITH ET AL.,
Plaintiffs in Error,

versus

MRS. BETTIE ALLEN ET ALS.,
Defendants in Error.

BRIEF FOR J. L. AUCOIN, ADMINISTRATOR OF THE SUCCESSION OF T. H. ALLEN, PLAINTIFF IN ERROR IN NO. 176 AND DEFENDANT IN ERROR IN NO. 168.

STATEMENT OF THE CASE.

Richard H. Allen died in the parish of Lafourche on the 19th of September, 1894. At his death, and for many years prior thereto, he was the owner of a valuable sugar

plantation, upon which he was engaged in the cultivation of cane and the manufacture of sugar. At the time of his death there was standing in his fields a large crop of cane ready for harvesting. In anticipation of this crop and of the manufacture of sugar therefrom Mr. Allen had complied with all the provisions of the bounty schedule of the act of Congress, known as the McKinley bill, and would have been entitled to collect the bounty. But in August, 1894, about one month prior to his death, the bounty schedule of the McKinley bill was repealed, There was, therefore, no bounty provision in force at the time of his death.

Mr. Allen left a will, from which we will quote the following pertinent provisions:

"I give to my wife, Bettie Allen, one-half of my Rienzi plantation and one-half of all tools, mules, etc. The names of my executors, etc., will be named hereafter. My executors shall have from one to five years to sell and close up the estate, as I fear property will be very low and dull. They can sell part cash, part on time, 8 per cent. interest with vendor's lien. I will that my wife do have one-half of everything belonging to Rienzi, except the claim due me by the United States; that and other property I will speak of further on. I appoint as my executors, Ogden Smith and W. F. Collins, residing on Rienzi plantation. I also appoint Mrs. Bettie Allen, executrix. I give them full power to sell Rienzi plantation whenever they find a good offer for all the property there belonging. When it is sold half of all the proceeds, cash, notes, etc., is to belong to my dear wife, Bettie Allen. The other half of Rienzi will be spoken of hereafter. As I fear property will be very low, I give my executors five years to work for a good price. In the meantime that they are waiting to sell, the place can be rented or worked so as to pay all taxes and other charges; any over that to go to Mrs. Bettie Allen's credit."

Under these testamentary provisions the executors named in the will took possession of the plantation after Mr. Allen's death, and proceeded with the operation of the same just as Mr. Allen would have done had he lived. They took off the crop of cane and manufactured sugar therefrom. Not only did they do this, but they proceeded

with the cultivation of a new crop during the following year, and with the manufacture of sugar therefrom. It was not until January, 1896, that their gestion, with respect to the plantation, was terminated by the sale of the plantation with the consent of all parties interested. After the crop, which was standing at the time of the testator's death, had been harvested and manufactured, the executors petitioned for and obtained an order from the court of probate authorizing them to continue the cultivation of the plantation (Trans., p. 65).

On the same day two of the executors, Mrs. Bettie Allen and W. F. Collins, filed what was termed a "provisional account" (Trans., p. 66). In their petition, presented with their account, they stated that they thereby accounted for the whole of the estate except the crop of sugar on the plantation during the year 1894, which they proposed to account for as soon as the same was sold. A few days later the third executor, Ogden Smith, who dissented from the account filed by the other two, filed an account in which he proposed a final distribution of all the property of the estate (Trans., p. 72 *et seq.*). In this account he proposed to turn over the product of the crop which was standing at the date of the testator's death to the legatees of the plantation, on the ground that it formed a part of the realty at that time and passed with it. This contention was maintained by the probate judge. On appeal, the Supreme Court reversed this ruling. We quote the following from the opinion:

"It is plain from the terms of the will that the testator intended that the plantation should be sold and the proceeds distributed as directed by him. Speaking from the time of his death, for the future sale of the property, he said to his executors that they should sell the Rienzi plantation and distribute the proceeds, and until they did sell it the proceeds should go to the wife. The legatees could not sue immediately after the death of the testator for a division in kind, as this would have been contrary to the positive mandate of the testator. The plan-

tation was directed to be sold in the most positive language. * * * So long as the plantation remained in the hands of the executors Mrs. Allen was entitled to the proceeds of the crops."

On March 2, 1895, while the plantation was still being operated by the executors, under the authorization of the probate judge granted on January 24, 1895, and herein above referred to, the act of Congress was passed granting a bounty of eight-tenths of a cent per pound to all producers of sugar, who, having complied with all the requirements of the bounty schedule of the McKinley Act, would have been entitled to a license under said act, if the same had not been repealed. Under this act, the executors of Mr. Allen collected a net bounty of $11,247.65 on the sugar produced from the crop of cane which was standing at the date of the testator's death. The executors thereupon filed second accounts. Mrs. Allen and W. F. Collins filed an account in which they proposed to turn over the proceeds of the bounty collection "to Mrs. Bettie Allen as the owner of the net proceeds of the crop of 1894 on the Rienzi plantation, under the will of the testator and the decree of the Supreme Court," and in which they proposed to charge the net loss on the crop of 1895 to the general assets of the estate, this amount being only $916.19. In other words, they proposed to turn over to Mrs. Allen the large profits of the crop of 1894, without deducting the loss on the crop of 1895. The third executor, Ogden Smith, filed an account in which he proposed to pay over to Mrs. Allen under the former decree of the Supreme Court the net proceeds of sale of the two crops after deducting all expenses incurred by the executors in relation to both, and also the expenses paid by the testator prior to his death in relation to the crop of 1894. He further denied that the bounty money formed any part of the proceeds of the crop of 1894, maintained that this money was an unwilled

asset of the estate and proposed to turn the same over to the legal heirs of the testator. To these accounts appropriate oppositions were filed by the parties interested. Upon the issues thus made the Supreme Court decided, in an opinion handed down on April 12, 1897 (Trans., p. 125), as follows:

1. That the expenses incurred by the testator prior to his death were not to be taken into consideration.
2. That all of the expenses incurred by the executors in the operation of the plantation must be deducted from the proceeds of the sale of the crops made during their gestion, including the deficit on account of the crop of 1895.
3. That the bounty money formed no part of the proceeds of the crop; was not included in the legacy to Mrs. Allen of the net proceeds of the crops during the administration of the executors, was an unwilled asset and passed to the legal heirs.

Before this decree became final a rehearing was granted, restricted to the question of the distribution of the bounty. On this rehearing the Court rendered an opinion (Trans., p. 145), in which, while adhering to its former decision, that the bounty formed no part of the proceeds of the crop and did not pass under the legacy to Mrs. Allen of such proceeds, it proceeded to apportion the bounty between the legal heirs and Mrs. Allen, on the theory that within the meaning and intendment of the act of Congress of March 2, 1895, the testator was the "producer" up to the time of his death, and that, thereafter, within the meaning and intendment of the act, Mrs. Allen was the "producer," and entitled as such to a proportion of the money. The Court decreed that the bounty money should be equally divided between Mrs. Allen and the legal heirs.

Writs of error were applied for and obtained both by the legal heirs and by Mrs. Allen.

Argument.

There are but two possible grounds upon which Mrs. Allen can claim this bounty money: (1) Because it was willed to her by Mr. Allen; or (2) because she was the producer of the sugar within the meaning and intendment of the act of Congress, and was, therefore, the direct beneficiary thereof. The only provision of the will under which she could claim the bounty is that in which the testator authorizes his executors to rent or work the place so as to pay all taxes and other charges, "any over that to go to Mrs. Bettie Allen's credit." The Supreme Court of the State has decided that this language did not include the bounty collected by the executors, and we submit that this decision on this point is conclusive, and will not be reviewed by this Court. In its original opinion on this question the Supreme Court of the State used the following language:

"The claim for bounty had not been collected when the succession was last before us. It was a gratuity from the government, notwithstanding it was based upon an estimate of the crop as a means of calculation, and predicated upon the production of a crop by the owner thereof under rules and regulations which were established by the treasury department.

"The allowance of the bounty was by the government conditioned on the fulfilment by the deceased of certain prerequisites, though payment of it was not made until after his death and subsequent to the filing of the executor's provisional accounts.

"The equitable claim of the deceased to the bounty had been created during his lifetime, and the license obtained and all conditions precedent had been complied with, though no mention of it was made in the will.

"It seems quite clear to our minds that the bounty money which was collected from the government by the executors formed no part of the crops of 1894 and 1895, nor of their proceeds. It was not *in esse* at the time those crops were grown and gathered.

"The executors did nothing but make the necessary proofs preparatory to its collection and receive payment of the money. It must consequently be classed as an unwilled asset, and not as a part of the net proceeds of the crop of 1894, passing under the will of Mrs. Allen."

In its last opinion, rendered on the rehearing of the case, the Supreme Court of the State said: "We desire it to be well understood that, in our opinion, the bounty money is no part of the crop or the proceeds of the crop. The question was, who was the owner and producer of the crop" after the death of the testator?

The bounty fund in this case was collected by the executors, under an act of Congress passed on March 2, 1895, long after the death of the testator and long after the crop of 1894 had been taken off, manufactured and sold by the executors. Even if it had been possible to suppose that *existing* bounty rights might have been included under the terms of the legacy to Mrs. Allen (which we consider impossible), yet the Civil Code of Louisiana expressly forbids the inclusion therein of *this* bounty by the provision of Art. 1718:

"A general legacy does not embrace the things included under the genus, which have been acquired after his death, though by his order."

We submit, therefore that Mrs. Allen can make no claim to the bounty fund in this court on the ground that it was included in the bequest to her of the net proceeds of the crops during the gestion of the executors.

This brings us to the question, and the only question, presented to this Court for determination by the record: Who was the beneficiary of the act of Congress of March 2, 1895, the Succession of R. H. Allen or Mrs. Allen?

We submit that the pretension of Mrs. Allen that she was the beneficiary of the act can not be sustained for the following reasons:

1. Because the bounty was granted in express terms "to those producers who complied with the provisions of the tariff act of October 1, 1890."

This was a gift of the government made directly to the licensees of the government under the prior tariff act, and it was solely in virtue of his quality as such licensee that

Mr. Allen, and after his death, his succession, became entitled to the same. No one but Mr. Allen or his personal representatives could have collected the same, and no transfer of this right could have been made. Any such transfer would have been stricken with nullity under the terms of Sec. 3477 of the Revised Statutes. It was only because the sugar was manufactured by the personal representatives of Mr. Allen, who had complied with the provisions of the MsKinley Act, that the bounty was collected at all. If it had been produced by any other person, the bounty could not have been collected.

2. Because Mrs. Allen was never in any sense the owner of the crop and did not produce any sugar. Nor did she ever contribute one cent to the expenses of cultivation and manufacture by the executors.

Nobody ever contended that she was entitled to anything but the net proceeds of the crops during the gestion of the executors after deducting all expenses and charges. The contention that she became the owner of the standing crop at the instant of the death of Mr. Allen is utterly without foundation. There is not a line in the will to support such a contention. It was originally claimed by the legatees of the plantation that they were entitled to this crop, in spite of the fact that it was harvested and manufactured by the executors, and in spite of the clause of the will giving to Mrs. Allen the net proceeds of the working of the place by the executors. The Supreme Court of the State denied this claim, and held that as the cultivation of the crop was completed, and as the cane was manufactured into sugar by the executors, Mrs. Allen was entitled to the net proceeds. But neither counsel nor Court contended that she was the owner of the standing crop. That she never was is perfectly clear. Suppose the day after the death of Mr. Allen, some one had proposed to buy the plantation with the standing crop on

terms satisfactory to the executors, and suppose the place had been then sold: To whom would the whole proceeds of sale have belonged? The question is answered in the very opinion of the Supreme Court in which Mrs. Allen was awarded the net proceeds. The Court says:

> "If the plantation should have been sold with the growing crops, it would have passed with the place and increased the proceeds. So long as the plantation remained in the hands of the executors, Mrs. Allen was entitled to the proceeds of the crops. If not sold in accordance with the directions of the testator, it is only at the moment of delivery to the legatees, if they choose to hold it in indivision, that the growing crops pass to them as a part of the immovable" (Trans., p. 118).

This language makes it perfectly clear that Mrs. Allen was never the owner of the crop of 1894, or of the crop of 1895. She was merely entitled, under the terms of the will, to the net proceeds of such crops as might be made and sold by the executors during their gestion.

It is equally clear that Mrs. Allen never produced any sugar. The plantation was cultivated and the crops manufactured into sugar by the executors, who accounted to the Court for the proceeds. Nor can we understand how it can be claimed that Mrs. Allen ever contributed one cent to the expense of cultivation and manufacture. These expenses were paid by the executors out of the general assets of the succession, to which the amounts so expended were, of course, repaid out of the proceeds of the crops when sold, for the reason that Mrs. Allen was entitled under the will only to the *net proceeds* after deduction of these expenses and charges. But, manifestly, this was in no sense a charge against Mrs. Allen.

Counsel for Mrs. Allen seems to consider that his position that she was the owner of the crop is fortified by the holding of the Supreme Court of the State that she was "responsible for the deficit on the crop of 1895." We quote the following from his brief (p. 19):

"Especially are we confirmed in this view when the Supreme Court held her responsible for the deficit on the crop of 1895. No grounds would exist on which to subject her to that charge as the result of the plantation operations of 1895, if, as here contended by the legal heirs, her rights as legatee under the bequest are postponed until after the sale of the crop by the executors, and then vested only in the net proceeds resulting from the sale. Under such a construction of the bequest her rights as legatee upon the crop would be contingent, eventual and dependent on net proceeds over expenses, resulting from the sale of the crop, but such a construction could not create or give rise to any obligation on her part to pay any loss which might enure from a failure of the proceeds to pay expenses."

The conclusion which counsel draws in this paragraph is based upon an entirely false premise, viz.: that the Court charged Mrs. Allen with the deficit on the crop of 1895 or made her responsible for same. The Court did no such thing. It merely charged this deficit to the proceeds of the crops sold during the gestion of the executors in order to determine the net proceeds of their administration. The executors manufactured and sold two crops, the crop of 1894 and the crop of 1895. The first yielded a large profit; there was a deficit of about $900 on the second. Mrs. Allen was entitled only to the net proceeds of their whole administration. In order to arrive at this amount, it was, of course, necessary to deduct the deficit on the crop of 1895. If the whole administration of the executors had shown a loss there would have been no possible ground upon which this loss could have been saddled upon Mrs. Allen, a consideration which in itself snfficiently negatives the theory that she was the owner of the crops and the producer of the sugar from the time of the death of Mr. Allen.

3. Because evén if Mrs. Allen had been the owner of the crop and the producer of the sugar, she would not have been entitled to the bounty under the act of Congress because she was not a producer who had "complied with all the provisions of the previous tariff act."

She would have had no more right to the bounty than would a purchaser of the plantation at the death of Mr. Allen who had not complied with the provisions of the McKinley act, and under the terms of the act and those of Sec. 3477 of the Revised Statutes, we think it very clear that such a purchaser would have had no right whatever to the benefits of the act.

We, therefore, submit that the claim of Mrs. Allen to the whole of the bounty fund, as the direct beneficiary of the act of Congress of March 2, 1895, ought to be dismissed, and that the judgment of the Supreme Court of Louisiana awarding to her one-half of the fund on the ground that she was entitled to that proportion under the said act of Congress should be avoided and reversed, and a judgment rendered decreeing the bounty fund to belong to the succession of R. H. Allen and as such, under the decisions of the State Supreme Court, to be payable to his legal heirs.

We note a suggestion in one of the briefs submitted on behalf of Mrs. Allen that this Court is without jurisdiction in No. 176 of these consolidated causes for the reason that plaintiffs in error in that cause, the executor, Ogden Smith, and the legal heirs of the deceased, R. H. Allen, do not claim the fund in controversy under the act of Congress, but by inheritance from R. H. Allen.

It is true that the plaintiffs in error claim the fund by inheritance from their ancestor, R. H. Allen; but their claim is based upon the act of Congress. The situation of the parties to this litigation may be stated thus:

Mrs. Allen claimed in the State Court that she was the direct beneficiary of the act of Congress of March 2, 1895, and as such entitled to the whole fund. The Supreme Court of the State denied this claim as to one-half

of the fund, and she applied for and obtained a writ of error from this Court.

The legal heirs of R. H. Allen claimed in the State Court that under the act of Congress the succession of Allen was the direct and sole beneficiary of the bounty provision; that this bounty fund was not included in any bequest contained in the will, and that they were, therefore, entitled to the fund. The Supreme Court of the State while admitting that the bounty fund was not included in any bequest of their ancestor, and that they were entitled to so much thereof as belonged under the act of Congress to his succession, denied that under that act his succession was the beneficiary of more than one-half of the fund. By its judgment the State Court denied a title asserted under an act of Congress, not immediately it is true, but mediately through the right of inheritance.

Respectfully submitted,

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[16,670]

(16,685)

Supreme Court of the United States.

WASHINGTON, D. C.

NO. 168

MRS BETTIE ALLEN, Executrix etc., ET AL,

—VS.—

OGDEN SMITH, Executor etc, ET AL.

NO. 176

OGDEN SMITH, Executor, ET AL,

—VS.—

MRS. BETTIE ALLEN, Executrix, ET AL.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

Brief on behalf of the Smith heirs, Plaintiff in error and

Defendant in error.

—SYLLABUS.—

1. The bounty granted by Act of Congress of March 2nd, 1895, on the crop of 1894 was the recognition, on the part of the Government, of a moral obligation. 163 U. S. Reports p. 430.
2. This moral obligation sprang into existence on August 28th, 1894, the date of the repeal of the McKinley bounty act.
3. Mr. R. H. Allen, the testator, died Sept. 19th. 1894, hence this moral obligation of the Government was due to him, and was actually existent at the date of his death, he having complied with all of the requirements of the McKinley act.
4. The crop of sugar of 1894 was manufactured by the executors of R. H. Allen's estate, and the bounty under act of March 2nd, 1895, was collected by them, as representatives of his estate.
5. The will of Mr. Allen does not dispose of the right to the bounty either directly or by implication, as the bounty forms no part of the crop or of its preceeds. 48 L. A. p. 488.
6. It necessarily follows that the right to the bounty being an unwilled asset, became vested in his legal heirs at the moment of his death and they alone are entitled to it.
7. In the eye of the law, the personality of Mr. Allen was continued in his legal representatives, his legal heirs. At his death they were seized of his entire estate, under the obligation to discharge the legacies of his will. They were, therefore, the producers and manufacturers of the crop of 1894 in the purview of the law, and within the meaning of the Act of Congress of March 2nd, 1895.

MAY IT PLEASE THE COURT ;

In order to clearly comprehend the issues before the Court it is necessary to make a brief historical review of the events leading up to this litigation.

Mr. R. H. Allen, a large sugar planter residing in the Parish of Lafourche, Louisiana, died on September 19th, 1894, and left a will making various bequests, but this will did not dispose of all of his property, and he named no residuary legatee.

The following clause in the will is the one out of which the present controversy over the bounty grows, viz :

"I appoint as my Executors Ogden Smith and W. F. Collins residing on Rienzi plantation I also appoint Mrs. Bettie Allen Executrix. I give them ful power te sell Rienzi plantation When Ever they find a good offer all the property there belonging. When it is sold half of all the proced Cash Notes &c is to belong to my wife Bettie Allen The other hafe will be spoken of hereafter As I fear property will be very low I give my Executors five years to work for a good price in the Meantime That they are waiting to sell, the place can be worked so as to pay all Taxes and other Charges, any over that to go to Mrs. Bettie Allen's credit. The other half of Rienzi and a claim I hold against the Government of the United States for army supplies I think is about one hundred thousand dollars These two amounts or halfs I intend to give to the families of my brother Thomas H. Allen's four children R. H. Allen Jr for his family's use Thomas H. Allen Jr for his wife and children Harry Allen for his wife and children Mrs. Mary Louise wife of J. C. Leatham of New York City" &c, &c.

The will was in olographic form, was duly probated and all the executors named qualified The crop of cane on the Rienzi plantation, after his death, was harvested and saved by his executors, the funds for doing this being taken from the

general cash funds of the estate. The executors differed as to the proper distribution of the estate to the different legatees, and executors, Collins and Mrs. Allen, filed one account, and executor, Ogden Smith, filed another. To both of these accounts the legatees and interested parties filed oppositions. The controversy was taken to the Supreme Court of the State of Louisiana and was finally disposed of by the decision of that Court which is reported in the 48th Louisiana Annual at page 1036. In that decision the status of Mrs. Allen is fixed as a particular legatee. She contended that she was a residuary legatee, but the Court decided against her contention and fixed her status, as we say, as a particular legatee.

The Court also held that the three neices named in the will were, by the terms of the will, excluded from participation in the residium or unwilled portion of the estate. The Court also held that Mrs. Bettie Allen, surviving wife of the deceased was entitled, under the clause of the will above quoted, to the net proceeds of the crop of 1894.

At the time of the filing of their accounts by the executors the crop of 1894 had not been disposed of by them, and the bounty granted by the act of Congress giving 8-10 of a cent a pound, approved March 2nd, 1895, had not been collected, consequently these two items were reserved to be further accounted for by the executors. In their second accounts for these two items the executors of the estate were again at variance. Executors Collins and Mrs. Allen proposed in their account to give the whole bounty, which had in the meantime been collected and which amounted to $11,569.35, to Mrs. Allen Executor Smith, on the other hand, treated the bounty as an unwilled asset and proposed to distribute it equally among the three sets

of heirs, the Allens, the Turners and the Smiths, leaving out the three nieces that had been excluded by the first judgment of the Supreme Court of Louisiana.

Numerous oppositions were filed to the accounts and the case went a second time to the Supreme Court of the State of Louisiana for final adjudication. This Court in this second appeal, reported in the 49th Annual page 1096, at first held that the bounty, under the act of Congress of March 2nd, 1895, was an unwilled asset of the estate, and was to be distributed among the legal heirs, the Turners, the Smiths and the Allens, excluding from participation therein the three nieces that had been excluded in the first opinion rendered. An application for rehearing was made by Mrs. Allen, and it was granted only on the question of the bounty.

The Court, on the rehearing reported in 49th Louisiana Annual page 1112, changed its first opinion. It gave to Mrs. Allen one-half of the bounty and gave to the three sets of heirs the other half in equal proportions. From this decision of the Louisiana Court all parties interested have prosecuted a writ of error to this Honorable Court.

From the foregoing, therefore, it will be seen that the only question presented to this Court is the proper destination of the bounty, $11, 569. 35 granted under the act of March 2nd, 1895.

Mrs. Allen contends that under the will and under the act of Congress she is entitled to the entire bounty. The legal heirs of Mr. Allen, on the other hand, contend that neither under the will nor under the act of Congress is she entitled to the bounty, but that it is an unwilled asset of the Allen estate, falls into the unwilled residuum, and therefore, the whole bounty should be

distributed among the legal heirs.

The question presented is full of difficulties and perplexities. For its proper solution an interpretation of the bounty laws is necessary, and we were about to add also an interpretation of the will and testament of Richard H. Allen, but this latter is not necessary, as the Supreme Court of Louisiana placed the right of Mrs. Allen to one-half of the bounty solely under the bounty laws.

The following facts are the salient ones: Mr. R. H. Allen died on the 19th, of September 1894. The McKinley bill was repealed by Congress on the 28th, of August 1894. The bill was, therefore, repealed nearly a month before the death of Mr. Allen. The record shows that Mr. Allen, prior to July 1st, 1894, had applied for a license to produce sugar and had complied strictly with the McKinly act of 1890, and that if that act had continued in existence he would have been entitled to a license under that law

The crop of 1894 was saved and manufactured by the executors of Mr. Allen. The act of Congress giving 8-10 of a cent a pound to the producers of sugar who had complied with the provisions of the McKinley act was approved on March, 2nd, 1895. The bounty granted under this act was collected by the executors of R. H. Allen. The question, therefore, is, who was the producer of the sugar made on Rienzi plantation from the crop of 1894 comprised in the period commencing Angust 28th, 1894 and ending June 30th, 1895, both dates inclusive?

The Supreme Court of the State of Louisiana has already decided that the bounty forms no part of the crop, and forms no part of the proceeds of the crop. Deloghny vs. Her Creditors 48 A. 448. That Court reaffirms in this case the doctrine laid down

by them in the Deloghny case. Therefore, while, under the will of Mr. Allen, Mrs. Bettie Allen is the legatee of the net proceeds of the crop of 1894, she is not, under said clause in the will entitled to the bounty because the bounty is not an accessory of the crop. Her title to the bounty cannot be found in the testament of Mr. H. R. Allen, and whatever rights she has must, therefore, be determined by the facts existing after his death and by the laws of the United States relating to bounties. The will of Mr. Allen contains nothing to show any disposition of the bounty or of any rights growing out of the laws relating to bounties. In the case of the United States vs. Realty Company, and the United States vs. Andrew H. Gay, 163 U. S. Reports, page 430, this Honorable Court, after reviewing all the law on the subject and the situation of the sugar producers of the country, concluded that the act of Congress of 1895 granting a bounty of 8-10 of a cent a pound was the recognition and discharge of a moral obligation on the part of the Government. Now in this case, to whom was the moral obligation due by the Government and when did this moral obligation spring into existence ? It seems clear that the moral obligation was due to Mr. R. H. Allen and it sprang into existence on the 28th of August 1894, the date when the McKinley bill was repealed. Mr. Allen was living at that date and this moral obligation was beyond a doubt due to him by the Government. He had long prior thereto been a sugar planter, had had the protection secured by tariffs in former years and later the protection secured by the bounty under the McKinley bill. At the time of his death this moral obligation on the part of the Government was an existing right. That right he never disposed of by will, and that right descended to his legal hairs by operation of law. This seems simple enough

and conclusive, but the difficulty arises when we read the act of Congress of March 2nd, 1895, relating to bounty on sugar, which reads as follows :

"That there shall be paid to those producers who complied with the provisions of the bounty law as contained in Schedule E., of the Tariff Act of 1890, by filing a notice and application for license and bond therein required, prior to July 1st, 1894, and who would have been entitled to receive a license as provided for in said act, a bounty of 8-10 of a cent per pound on all sugars actually manufactured and produced in the United States, testing not less than 80 degrees by the polariscope, from beets, sorghum or sugar-cane grown or produced within the United States during that period of the fiscal year ending June 30th, 1895, comprised in the period commencing August 28th, 1894, and ending June 30th, 1895, both dates inclusive, and for this purpose the sum of Five Million Dollars or so much thereof as may be necessary, is hereby appropriated etc."

The crop of 1894 was planted, cultivated and made by Mr. Allen during his life-time; he died on the 19th, of September 1894, and the crop was manufactured and saved by his executors. Mrs. Allen was the legatee of one half of the price of the plantation and the net proceeds of the crop of 1894. This crop is the crop which received the bounty under the act of March 2nd, 1895. The question is, under these circumstances, who was the producer of the crop of sugars on the Rienzi plantation for the year 1894, within the meaning of the Act of Congress of March 2nd, 1895? We contend that it was the legal heirs of Mr. Allen who had, at the date of his death, inherited the right or moral obligation that was due to R. H. Allen by the United States Government.

We think this will be plainly seen from an examination of he law as to the status of property at the death of a person in

Louisiana. The law of Louisiana, like nature, abhors a vacuum; it recognises no inter-regnum, and the political maxim, "Le roi est mort, vive le roi" finds an echo in the legal maxim "Le mort saisit le vif." The Civil Code of Louisiana recognizes the principles enunciated in this maxim in articles 934, 940, 941, 942, 943 and 944. Article 940 declares, "A succession is acquired by the legal heir, who is called by law to the inheritance, immediately after the death of the deceased person whom he succeeds. This rule applies also to testamentary heirs, to instituted heirs and universal legatees, but not to particular legatees."

And article 943 declares, "The heir being considered seized of the succession from the moment of its being opened, the right of possession, which the deceased had, continues in the person of the heir, as if there had been no interruption, and independent of the fact of possession."

There is an exception to this general rule established by these articles to be found under the head of Universal Legacies, articles 1607, 1608 and 1609 of the Civil Code of Louisiana. When there are forced heirs, article 1607 declares, these heirs are seized of right by the death of all the effects of the succession, and the universal legatee is bound to demand of them, the delivery of the effects included in the testament. And article 1609 declares, When, at the decease of the teststor, there are no forced heirs, the universal legatee, by the death of the testator, is seized of all the effects of the succession without being bound to demand the delivery thereof.

In the present controversy the contest is between Mrs. Allen, a particular legatee under the will of Mr. Allen, and the legal heirs of Mr. Allen. The maxim, "Le mort saisit le vif" has been expressly recognized by the Supreme Court of Louisiana

which has held that this maxim is a rule of our jurisprudence and that the seizing of the succession representative does not exclude that of the heir. 15 La. 527; 7 Rob. 183: 12 Rob. 258; 2 A. 339; 4 La. 571; 5 A. 113; 2 Aa. 299; 12 A. 577.

Mr. Marcadé in discussing the seizin of the heir in Vol. 3, Section 47 of his Explication du Code Civil commenting on article 794 of the Code Napoleon declares,

"La saisine n'est pas toujours accompanée de la propriété des biens. Ainsi, quand le defunt laisse un heritier legitime et un enfaut naturel, ce dernier, sans être saisi, c'est-a.dire sans avoir la posessesion, d'aucun bien, est cependant proprietaire d'une fraction de la succession ; en sorte que l'heritier legitime, quoique saisi, c'est-a-dire ayant la possession legale, de la succession entiere, n'a pourtant que la propriété d'une partie. Il en serait de meme si cet heritier se trouvait en face d'un ou de plusieurs legataires qui lui enlevent une parti plus ou moins grande de la succession ; c'est toujours l'heritier qui est saisi des tous les biens, qui les posséde tous, et qui les a sous son administration, jusqu'a ce que les legataires viennent se faire delivrer ceux qui leur appartiennent. L'heritier saisi, possesseur et administrateur des biens, peut meme n'avoir la propriété d'aucune partie de ces biens; c'est ce qui arriverait si, l'heritier n'etant pas d'ailleurs reservataire, le defunt disposait par des legs particuliers ou a titre universel de tous les biens qui composent son patrimoine.

Il n'y a qu'un seul cas ou l'heritier legitime ne soit pas saisi : c'est quand 1st cet heritier n'est pas reservataire, et 2 que la totalite des biens lui est enlevee par un legataire universel. Dans ce cas, c'est au legataire universel que la saisine est accordee (art. 1006) ; en sorte qu alors l'heritier est écarté de la pos-

session comme de la propriété, et reste completment etranger a la succession. Hors ce cas, c'est toujours l'heritier legitime qui est investi de la possession ; et un te stateur ne peut pas, alors meme qu'il retire a son heritier la propriété de tours ses biens, lui enlever la saisine, soit pour la donner a tel ou tel, soit pour donner a personne. Il est vrai qu'un testateur peut, en une on plusieurs personnes pour faire executer son t, leur donner la saisine de son mobilier (art. 1025, 1026); ette saisine speciale, qui ne peut jamais frapper sur les eubles, se trouve d'ailleurs soumise a la volonte de l'heritier, r celui ci peut la faire cesser en remettant aux executeurs testamentaires une somme suffiante pour l'acquittement des legs mobiliers (art. 1027)."

Therefore, as this author says, it is always the heir who is seized of all the effects of the estate, who possessess all, and who has them under his administration until the legatees cause to be delivered to them those legacies that belong to them. With a single exception it is always the heir who is invested with possession. The testator cannot take away the seizin from his heir, and in appointing an executor or several executors to carry out his will he can giue them the seizin of his estate, but this special seizin iu no way affects the seizen of the heir. See this subject discussed also in Cross on Successions, page 40 et seq.

From these principles of the laws of Louisiana it results that at the death of Mr. Allen his estate was not entirely disintegrated ; it did not fall apart into the separate particular legacies that he made, but the whole remained together as an entity in the possession of his heirs until the final settlement and liquidation of the estate by the payment of debts and legacies, or

in the language of article 942 of the Civil Code of Louisiana, "The right of possession which the deceased had continues in the person of the heir as if there had been no interruption and independent of the fact of possession."

Therefore, we claim that the producers of the sugar on the Rienzi plantation, from the crop of 1894 were the legal heirs, personal representatives of Mr. Allen, in whose person his possession continued as if there had been no interruption. At the date of the production of the sugar the estate was still in the hands of the executors, in the legal possession of the heirs, and totally undistributed. Not a legacy was claimed or called for and the whole matter was still in graemio legis. Mrs. Allen, as we have repeatedly stated, is nothing more than a particular legatee. A particular legatee, under the Louisiana law, never has any seizin, but must demand his legacy, and is only dispensed from this demand under certain circumstance. Civil Code of Louisiana articles 1626, 1627 and 1628. Mrs. Allen does not come under any of these exception. The will of Mr. Allen did not give the seizin of his estate to his executors, and Mrs. Allen was only in possession of the effects of the possession as one of three executors. Under no circumstances, then, can Mrs. Allen claim the seizin as particular legatee of any part of the succession.

In the succession of Frazer , 23 A. 594 the Supreme Cour of Louisiana laid down the following doctrines :

"A universal legatee who is also a testamentary executor although he has been recognized by the Probate Court in the two capacities and ordered to be put in possession, can be compelled to give security under article 1670 of the Civil Code of Louisiana if he has continued to act as executor." The Court declared, "In

order to vest the property of the succession in the universal legatee who is at the same time testamentary executor, there must be some deliberate act on his part showing he proposed to take possession as such, and the same Court again in Bird vs. Jones, 6 Annual 643, Succession of Townsend vs. Sykes, 38 Annual 859 enunciated the principles as follows: "Where one is executor and at the same time universal legatee, and takes possession as executor, he will not be regarded as legatee, nor can he, without judicial authorization, change the nature of his possession."

If this is the rule as to a universal legatee, how much more stronger does it apply to a particular legatee setting up the pretentions of Mrs. Allen?

Mrs. Allen's possession has always been as joint executrix, and not as legatee, so far as the plantation and crop were concerned, and she so declares by her position before the Court where she is asking, as executrix, to be authorized to pay the legacies to other legatees as well as herself.

To show the untenability of the position of Mrs. Allen in making her claim for the bounty, suppose that instead of being a testamentary gift Mr. Allen had made to her, before his death, a donation inter-vivos under the laws of Louisiana, of one-half of the value of his Rienzi plantation and all the net proceeds of the crop grown on said plantation in the year 1894, and suppose Mr. Allen had lived long enough to collect the bounty himself, who, under the state of facts, would be entitled to the bounty? We do not think the question admits of a doubt but that Mr. Allen would be entitled to the bounty, and Mrs. Allen to no claim in the bounty. In what respect is there any difference between this supposed case and the case actually before the Court. We con-

fess that we can see none, and that Mrs. Allen has no more rights under the actual facts than she would have under the supposed case. Mr. Allen, in the supposed case, did not part with any bounty rights and would be entitled without question to the whole bounty. In the actual case before the Court Mr. Allen did not part with his bounty rights, was succeeded by his heirs, to whom all his rights descended that were not otherwise disposed of, and they, it seems to us, are entitled to the whole bounty.

In no view could Mrs Allen be considered as the producer of the crop of 1894 on the Rienzi plantation, under the bounty laws. She had not complied with the McKinley law, in fact could not, because that law was repealed during the life-time of Mr. Allen. She would not, under that law be entitled to a license and this was actually necessary in order to make her a producer within the meaning of the Act of Congress of March 2nd, 1895, because, under that act, only those producers were entitled to the bounty who would have been entitled to a license under the McKinley Act, and who produced sugar from cane, beets, etc., grown and raised in the United States. Mrs. Allen, under the will of Mr. Allen, was not the owner of the one-half of the Rienzi plantation, she was not the owner of the crop of 1894. She was a mere beneficiary. This is the unmistakable meaning of the will of Mr. Allen, and the Supreme Court, when the case was first brought before it in the 48th Louisiana Annual, page 1047, so declares. "They say, "The legatee could not sue immediately after the death of the testator for a partition in kind as this would have been contratry to the positive mandate of the testator. The plantation was directed to be sold in the most positive language. The legatees, then, were only interested in

the proceeds of the sale. The net proceeds belong to the wife from the date of the death of the testator until the sale of the place. No other reasonable interpretation can be given to the language of the testator."

If Mrs. Allen, then, was not the owner of the crop of 1894, but only of its net proceeds, if she was not the owner of the half of the plantation on which the crop was produced, under what theory is it possible that she can be regarded as the producer of sugar within the meaning of the Act of Congress of March 2nd, 1895?

To sum up our argument, the bounty granted by the Act of Congress of March 2nd, 1895, on the crop of 1894, was the recognition on the part of the Government of a moral obligation. This obligation existed in favor of those who had produced and manufactured sugar prior to the passage of said act, who had been protected first by a tariff and secondly by a bounty. Mr. Allen belonged to that class. At the time of his death, on the 19th of September 1894, this moral obligation on the part of the Government was in existence. This moral obligation being undisposed of by his will passed, by the laws of inheritance, to his heirs. The heirs of Mr. Allen being, in legal contemplation, in possession of all the property of his estate, subject to the demands of the legatees, were the real producers of the sugar of the crop of 1894, their possession being a mere continuance of the possession of Mr. Allen.

We, therefore, ask the Court that the judgment of the Supreme Court of Louisiana, in relation to the bounty in this case, be reversed, annulled and set aside, and that the said bounty be adjudged to belong to the legal heirs of the late Richard H. Allen in the proportion of one-third each in the three sets of

heirs, the Turners, the Smiths and the Allens.

Respectfully submitted,

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Henry Chiarella

Attorney for Ogden Smith et al

Defendant in Error in No. 168

Plaintiffs in Error in No. 176